

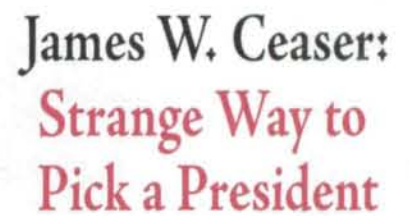
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PARTHIAN SHOT

Mark Helprin is on vacation.



CORRESPONDENCE

CONSERVATISM AND CIVIL RIGHTS

William Voegeli is to be commended for his important and informative examination of "Civil Rights and the Conservative Movement" (Summer 2008). In the course of his insightful treatment of conservative views during the 1950s and 1960s—in particular those of William F. Buckley, Jr.—he poses a challenge to today's conservatives, 99% of whom now retroactively embrace the civil rights movement of the 1960s. Such a stance "makes sense only if there was at least one alternative way to achieve the same result without augmenting Big Government." Yet, he observes, it is "difficult to imagine...a solution to the problem of segregation in which the powers asserted by the federal government were both large enough to accomplish the task and small enough to satisfy conservatives wary about the growth of Big Government." But such a path did and still does exist in the 14th and 15th Amendments.

The 14th Amendment was written by radical Republicans who set out to alter fundamentally the relationship between the federal government and the states by providing an enforceable federal "check" on the three branches of state government. The Privileges or Immunities Clause barred state laws that violated fundamental

liberties either by discrimination or generally, the Due Process Clause mandated that these laws be applied to particular persons by reliable procedures, and the Equal Protection Clause mandated that state executive officials extend the protection of these laws to all persons. With that amendment's Enforcement Clause as their constitutional warrant, these same Republicans went on to enact civil rights acts every bit as radical as those enacted in the 1960s. Indeed, the laws would have been even more radical had they not been impeded by Democratic filibusters in the Senate and (as was then permitted) in the House. Confronting continued Southern resistance, the Republicans then secured the enactment of the 15th Amendment, which was designed to be the ultimate voting rights act aimed at racial discrimination.

In a story too complicated to narrate in a letter such as this, all this constitutional and legal reform was systematically gutted by a Supreme Court bent on restoring the states-rights federalism that preceded the Civil War. *Plessy v. Ferguson* was merely the culmination of 20 years of judicial resistance to the amended text of the Constitution. The Justices succeeded so well in this endeavor that even the Warren Court in *Brown v. Board of Education* did not question their judicially constructed edifice. Many of these *Plessy* cases are still considered bind-

ing precedents by the Court. So in upholding the civil rights acts of the 1960s, most of the Justices felt more comfortable employing New Deal Commerce Clause jurisprudence than reviving the 14th Amendment's Enforcement Clause.

Not coincidentally, distorting the Commerce Clause to advance the cause of civil rights also empowers the rest of today's "progressive" agenda. Crucial to the campaign against restoring the Constitution's original meaning is the perceived necessity to expand the federal commerce power to serve the end of civil rights, a necessity that results from a crabbed reading of the original 14th Amendment.

Regrettably, because conservatives and paleo-libertarians are today as ambivalent, if not as hostile, to the 14th Amendment's federalism-altering original meaning as they were in the 1950s, they are hard pressed to answer Voegeli's challenge. Their post-New Deal repudiation of "judicial activism" has blinded many to the radicalism of the Civil War amendments and disarmed them from explaining how a governmental civil rights agenda can be pursued without empowering Big Government across the board. Indeed, their professed fear of judicial activism has led them to endorse a judicial conservatism that empowers the very Big Government conservatives profess to oppose. Given what motivated their enactment, it should come as

no surprise that the 14th and 15th Amendments provide an alternative way of justifying the federal enforcement of civil rights, while denying a plenary power in the federal government to do whatever it pleases.

Randy E. Barnett
Georgetown University
School of Law
Washington, D.C.

William Voegeli's notion that originalism and the civil rights movement were irreconcilable is a distortion. By invigorating the 15th Amendment, which had been allowed to lapse since the days of the Mississippi Plan of the late 19th century, conservatives might have insisted that Southern states cease employing ruses for preventing blacks from voting on the basis of their race. They might have insisted that the federal government put down the terror network that intimidated blacks out of registering to vote in large swaths of the South.

As we have seen since the adoption of the Voting Rights Act of 1965, enforcement of a program to restore blacks' access to the suffrage by enforcing federal law, would in the end have led to the abolition of segregation.

Kevin R.C. Gutzman
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William Voegeli, who deserves respect as an astute political commentator in most matters, provides a distorted account of the complex history of the conservative movement and civil rights. The problem is not what he writes about the late William F. Buckley, Jr.'s condemnation of the struggle for civil rights in the 1960s, but what Voegeli leaves out. In important ways, Buckley stood outside of the conservative Republican tradition of defending black civil rights.

While neither Democrats nor Republicans, liberals nor conservatives, enjoy a completely spotless record on civil rights, conservatives within the Republican Party served historically as defenders of equal opportunity and civil rights. House Republicans such as conservative Hamilton Fish (R-NY) supported federal anti-lynching legislation in 1922, 1937, and 1940, only to have these bills defeated in the Senate by Southern Democrats. In 1934, Oscar De Priest (R-IL), the first black congressman elected in the 20th century and a staunch anti-New Deal conservative, unsuccessfully tried to integrate the House restaurant. In 1947, the Republican-controlled Senate, headed by Robert Taft, refused to seat notorious racist Theodore Bilbo (D-MS) because of intimidation of black voters in the 1946 election.

This defense of civil rights for blacks was more than symbolic. In 1957, President Dwight Eisenhower submitted a "full package" civil rights bill to Congress, which would have allowed jury trials for voter intimidation cases. The president was outraged when Senate Democrats, led by Majority Leader Lyndon Johnson, watered down the bill to make it nearly meaningless by establishing the Civil Rights Commission without enforcement powers.

The Civil Rights Act of 1964 would not have been enacted without the support of conservative Republicans, led by Senate Minority Leader Everett Dirksen. Although Senator Barry Goldwater opposed this legislation, major opposition in Congress came not from conservatives, but from Southern Democrats who generally supported

Great Society welfare programs. In the Senate, 21 Democrats—half the Democratic caucus—voted against the bill.

Republicans fought for civil rights legislation on the basis of equal opportunity. Richard Nixon's administration instituted federal affirmative action, a policy which President Ronald Reagan refused to overturn.

By overlooking this record of conservative support for civil rights, Voegeli unwittingly provides ammunition to an extensive academic literature by the Left that depicts the conservative ascendancy in the last 50 years as a movement built on a racial backlash. Conservatives should not contribute to this distorted history by ignoring what should be a proud record.

Donald T. Critchlow
St. Louis University
St. Louis, MO

After reading William Voegeli's essay, I thought to myself, "there they go again." Voegeli's historical analysis focuses on a few individuals between 1955 and 1964, and ignores the long term and the broad diversity of the conservative movement.

In fact, many conservatives were (and are) classical liberal supporters of racial freedom. To focus on Buckley alone is to miss the larger movement and even to miss how Buckley and his wing of the movement changed over time. From a classical liberal perspective, the Buckleyite wing of the movement was wrong on race because it promoted "affirmative discrimination" from the Nixon years to the present. Buckley, Reagan, and others had no problem with massive government set-asides for minorities. Establishment conservatives such as George W. Bush have fled from questions of race because they agree with the Left but can't say so. They offer big-government conservatism on race ("affirmative access," as Bush put it so Clintonesquely).

But other wings of the movement continued the classical liberal tradition of civil rights. The NAACP's founders included classical liberals Moorfield Storey and Louis Marshall—two super-law-

yers who won important Supreme Court victories over residential segregation and "white primaries." These men were as *laissez-faire* on race as they were in opposing "Big Government."

The Old Right of the 1930s and 1940s fought Jim Crow, lynching, and racial injustice before civil rights was "cool." Anti-New Deal Republicans like Hamilton Fish (R-NY) and Robert Taft (R-OH) criticized FDR for failing to support anti-lynching bills, voting rights, and desegregation of the military. The conservative *Chicago Tribune* was the only major news outlet to investigate and denounce Japanese-American internment during WWII.

After World War II, anti-New Deal Republican Branch Rickey promoted civil rights through capitalism: he hired a black baseball player, Jackie Robinson, and described this as a "call from God." And on the godly side of conservatism, do not ignore the role Billy Graham played in fostering better race relations.

Into the 1950s, President Dwight D. Eisenhower played a crucial role in the civil rights movement and earned the praise of black civil rights groups (see David Nichols's splendid book on the topic). Ike had the support of midwestern conservatives such as Everett Dirksen in desegregating the military and the nation's capitol, and passing the first civil rights acts in decades.

The classical liberal tradition continues to the present in the opinions of Supreme Court Justices Antonin Scalia, Clarence Thomas, and John Roberts, and in Ward Connerly's heroic constitutional amendments. Compare Frederick Douglass's speeches with the writings of these men. They have a lot in common. It was Douglass, after all, who said "the Republican Party is the ship and all else is the sea."

Jonathan Bean
Southern Illinois University
Carbondale, IL

William Voegeli over-generalizes about his subjects and about the Republican Party's "indifference" to the grievances of black voters.

It is not the case that *National Review* went along with Jim Crow solely to combat the New Deal. In the 1960s William F. Buckley, James Burnham, and Will Herberg all warned against the radical social direction in which the civil rights movement would carry the country. (Herberg, by the way, had supported John Kennedy for president in 1960, and Burnham was a self-described Rockefeller Republican.) Buckley argued that the political culture would be pulled toward the left irreversibly if large numbers of already radicalized black voters were mobilized with government support. Anti-Communist contributors Willi Schlamm and Gerhard Niemeyer went after Martin Luther King's Communist advisors, and there was certainly a general sense among NR conservatives in the 1960s that the civil rights cause was soft on the Communist danger then facing America and Western Europe.

Despite the now enthusiastic acceptance of the civil rights movement and all or most of its work by a transformed conservative Establishment, the warnings of an earlier generation of conservatives still merit attention. The immigration and voting rights acts of 1965 and the introduction of affirmative action by the Equal Employment Commission, created by the 1964 act, all came within 16 months of the passage of the Civil Rights Act. Soon afterwards women, Latinos, and others would become government recipients of set-asides and preferential treatment, in a civil rights crusade that has gone on, and been periodically accelerated, down to the present.

By the early 1970s, *National Review* had modified its once uniformly negative attitudes toward the civil rights movement, in the context of a leftward shift that the *New York Review of Books* had noted as early as 1970. Voegeli places the date of this shift well beyond the point at which it began, when he observes that Buckley in 1979 had "urged, grudgingly, a national holiday in recognition of King's courage."

I am also mystified by the incriminatory tone of Voegeli's com-

ment that the GOP has to overcome "the suspicion that they are indifferent to black Americans' legitimate demands." What's a fellow got to do to accommodate his worst critics! It was the Democrats, not the Republicans, who in the 1950s ran an open and then another, less explicit, segregationist vice-presidential candidate. In 1964 it was Republican congressmen who voted for the Civil Rights Act with 90% of their votes, as opposed to the Democrats who provided only 50% of theirs. It was the Republican president, Richard Nixon, who supposedly angered blacks by making violent crime a campaign issue but who also openly introduced set-asides for blacks in the 1969 Philadelphia Plan. It is the "racist" George W. Bush who has filled his cabinet with minorities and appointed two black secretaries of state. Mr. Voegeli might be interested to know that GOP presidential candidate John McCain has been openly in favor of affirmative action in education since 1998. Is there something else he should be doing to reach out? He's already apologized profusely for not originally endorsing the King national holiday. But curiously the onetime segregationist Jimmy Carter did not have to lament his past in order to win the adulation of black voters and the civil rights Establishment.

Paul Gottfried
Elizabethtown College
Elizabethtown, PA

I am afraid that William Voegeli's subtle and almost serpentine essay is somewhat weakened by its use of William F. Buckley as a symbol and a symptom. Buckley—I realize with shock that I knew him for 30 years—was not a systematic thinker and, at least in his latter years, was wholly motivated, so far as I could tell, by status and insecurity. Thus for example his 2001 agreement with Michael Kinsley that the 1964 Civil Rights Act, was, on second thought, a good thing, sort of, doesn't need any more complicated an explanation than that Buckley wanted to appease a prince of the New Media, who had gra-

ciously allowed him to appear in *Slate*, and was anyway incapable of thinking his way out of the currently fashionable consensus.

What I take to be Voegeli's substantive point—that there really were drawbacks to the immense expansion of government power in the name of extirpating Jim Crow—is an important one that merits longer discussion. I would only add that the American elite's complacency about the results of what must be called the Second Reconstruction is misplaced. Firstly, it is not generally realized that black progress by many measures (for example, employment relative to whites) stalled after the 1960s. Secondly, the costs of integration fell, and are falling, almost exclusively on the white working class—not a pretty picture. Thirdly, the phenomenon of political correctness, which partly stems from the sacramentalization of the Second Reconstruction, threatens not merely liberty but also appropriate public policy in areas like education and immigration. In significant ways, the American Dilemma is as stark as ever.

Peter Brimelow
VDARE.com
Washington, CT

As I read William Voegeli's piece on William F. Buckley, Jr., and the civil rights movement, I thought, "Come on, Voegeli, make up your mind. Was Buckley right or wrong?" I concluded that Voegeli's answer would be, "Yes." Then I decided that, given the record, Buckley and the conservatives probably got a more balanced treatment from Voegeli than they would, and perhaps will, get from a lot of people.

No responsible person can regret the progress made by blacks since the civil rights acts. But even suggesting that there might have been a better—or perhaps just a different—way risks obloquy. Nevertheless, I think it useful to examine what I take to be Buckley's real position because it reminds us of the limits of government, and remembering the limits of government is always useful.

In his essay, Voegeli quotes Buckley as saying in 2001 that he would vote for the civil rights acts if they were "out there today," and saying in 2004 that "federal intervention was necessary." But Voegeli overlooks the fact that only a few years earlier, in 1998, Buckley held that "the civil rights programs were a formulaic response to a real need and not by any means one that has proved as successful as an alternative means might have been." I think that statement is a better reflection of the position Buckley held through the years. Not much happened or was discovered between 1998 and 2001 that would have required a change in his opinion except, perhaps, just a little mellowing. He certainly mellowed in his opposition to state prohibition of tobacco: only last November, a few months before his death, he wrote that he would, if he had the authority, forbid smoking in America, notwithstanding that he would be violating his secular commitment to the free marketplace. He was dying of emphysema at the time.

Is it possible there was another way? We'll never know, of course, and Voegeli admits as much: "There is no way of knowing whether that train [Buckley's "organic" progress], running on those tracks, would have ever come into the station."

But what we do know is what the prodigious growth in government has produced. It is not too early to tell how blacks have fared since the onslaught of the Great Society programs, animated by the same government philosophy that produced the civil rights laws. The statistics on black illegitimacy and crime paint a grim picture. In 1960, the illegitimacy rate among blacks was 22%. Today, it's about 70%.

Voegeli quotes Jonah Goldberg, offering, in 2002, a "blunt" judgment on conservatives during the civil rights era: "Conservatives... were often at best MIA on the issue of civil rights in the 1960s. Liberals were on the right side of history on the issue of race."

Maybe so. But look at what Goldberg has to say today (in his book *Liberal Fascism*) about the Great Society programs:

The Great Society's racial meddling...yielded one setback after another.... In the decade after the Great Society...[b]lack-on-black crime soared in particular.... Economically, as Thomas Sowell has catalogued, the biggest drop in black poverty took place during the two decades before the Great Society. In the 1970s, when the impact of Great Society programs was fully realized, the trend of black economic improvement stopped almost entirely.

So: blacks seem to be doing badly and are angry. And whites are angry too, at least those who were victims of affirmative action or had to endure busing. Perhaps we should take another look at what "alternative means" there might have been. Is it conceivable that the "legitimate, organic progress" Buckley hoped for in 1960 could have produced a better result than the federal laws we got, "artificially deduced from the Commerce Clause or from the 14th Amendment"?

Even if the pathologies in the black community are the results of racism, isn't that a stronger argument for the position that you cannot change—because in 40 years we have not changed—society by fiat, even constitutional fiat, but only by an organic process? There may be a finite amount of social adjustment government can get out of the people by running them through the federal wringer, their resistance in this case having been heightened by the manifest willingness of the liberals themselves to institutionalize racial discrimination.

In an address to the Conservative Party of New York in 1964 Buckley said the U.S. was "still reluctant to accept the state as a sacramental agent for transubstantiating private interest into public good. Have you reflected on the course of postwar American history?" he asked. "[W]ith all its power, the Establishment has failed in its efforts to ease over to the federal government the primary responsibility for education, or health, or even housing."

There's been a lot of easing over since 1964. George W. Bush's No Child Left Behind Act has inserted the federal government into education as never before. And we are now so close—oh, so close—to federalized health care you can smell the formaldehyde. In addition, of course, we've had a hailstorm of federal subsidies and programs—various community redevelopment programs, Urban Renewal (nicknamed by no less than James Baldwin "Negro Removal"), Aid to Families with Dependent Children, food stamps, the Special Supplemental Nutrition Program for Women, Infants, and Children, and on and on and on. That is the price we have *all* paid for altering the constitutional architecture Buckley sought to preserve—which should make us appreciate, at least somewhat, his hope in 1961 that "when Negroes have finally realized their long dream of attaining to the status of the white man, the white man will still be free."

If slavery was worse than Jim Crow (which it was) but Abraham Lincoln could countenance slavery to preserve the Union and still be regarded as our country's second-greatest president (or by some as our greatest president) why can't the early Buckley and his conservative colleagues, who were willing to countenance Jim Crow a little longer for the sake of not destroying the constitutional architecture, be regarded, not just as principled, as Voegeli regards them, but even just a bit...Lincolnesque?

Buckley's initial opposition to the civil rights acts made the liberals unhappy. His 2001 and 2004 positions supporting the acts made many conservatives unhappy. Perhaps a 2009 Buckley position might have made them both happy:

I should have favored the civil rights acts given the real needs of 1964 and notwithstanding my contemporaneous misgivings concerning the possible damage to the constitutional arrangements. But in the light of what transpired I think rejecting constitutional decorum in the hope of progress not built on the

good nature of the community would have been, unwisely, utopian.

That's the fusionist position.

Daniel Oliver
Washington, D.C.

William Voegeli accurately portrays Martin Luther King, Jr., as a skeptic of a capitalistic system that benefited from the labor of African Americans while failing to guarantee economic and political benefits to these same black employees.

Voegeli misses the mark, however, in his attempt to tie Malcolm X's phrase "By Any Means Necessary" to King's life and legacy. Although King could be an extremely pragmatic leader, he was passionately committed to non-violence and loving one's enemies. More than once he called off marches when participants succumbed to violence. He did advocate civil disobedience to bring about the necessary creative tension for social change, but he refused to lead any movement associated with violence. For King, a just end was impossible without a just and loving means.

He called for a very active federal government to fight President Johnson's so-called "War on Poverty." At the same time, King regularly challenged his audiences to accept personal responsibility. The learned helplessness and passivity that at times resulted from the old welfare system were never a part of King's dream.

Dr. Troy Jackson
University Christian Church
Cincinnati, OH

William Voegeli replies:

Suppose the version of my essay on civil rights and the conservative movement published in the CRB had been, instead, a draft copy circulated to this editorial advisory committee. I approach their responses by asking whether I would have revised that version of the essay in light of their critiques.

The suggestions offered by Professors Barnett and Gutzman are

ones that would have led to revisions. As they correctly point out, my statement that it's hard to imagine a solution to the problem of Jim Crow that would have ended it without alarming Goldwater conservatives fighting Big Government reflects a lack of imagination, either mine or the conservatives'. The road not taken, or even considered, was to reach back past the constitutional revolution of 1937, past *Plessy v. Ferguson*, to the original intent of the 14th and 15th Amendments. Doing so, Barnett and Gutzman argue, would have yielded a federal government that was both vigorous and limited. Instead, conservatives retroactively amalgamated the Republicans of 1865 with the New Dealers of 1935. (James Jackson Kilpatrick, a prominent syndicated columnist and frequent contributor to *National Review*, long insisted that the "Fourteenth Amendment to the Constitution, never having been validly ratified, cannot provide a valid basis for the mandate the Supreme Court proposes to inflict upon the Southern States.") The exploration of this road not taken would have added many paragraphs to an essay that was already quite long. A street sign, however, would have at least improved it.

I appreciate Professor Critchlow's kind words about my other writings; I admire his work as well. He and I will have to agree to disagree, however, about whether William Buckley and Barry Goldwater were central or peripheral to the story of the conservative movement from 1955 to 1965. His effort to minimize their significance strikes me as a misapplication of the "one man, one vote" doctrine. Most Republican senators did vote for the Civil Rights Act of 1964; many of them, such as Everett Dirksen, were reliably conservative on a range of other issues. I stand by my contention, however, that the conservative disposition from 1955 to 1965 is better reflected by Goldwater's vote against the civil rights bill and by Buckley's writings, than by the votes for the bill cast by Republican senators whose names are now known only to historians and political scientists. As for the opposition to civil rights from South-

ern Democrats, one of their leaders, Strom Thurmond, switched his affiliation to the Republicans a few weeks after the civil rights bill became law, a decision that is inexplicable if we rely on Critchlow's assessment: Thurmond would have been leaving the party relatively hostile to the civil rights movement in order to join the party that was on balance more friendly to it.

Professor Bean makes an argument similar to Professor Critchlow's. He says I focus on "a few individuals," like Buckley and Goldwater, thereby denigrating the importance of conservatives more receptive to civil rights, such as Billy Graham and Branch Rickey. Critchlow and Bean are both historians, while I am not. As such, they know better than I that accounts of what happened in the past that "everybody knows" to be true often turn out to be seriously flawed. Perhaps the history of the conservative movement that emphasizes the central roles of Buckley and Goldwater will prove to be one of those theories that is ripe for debunking. Until that new history is written, however, it seems safer for a layman like myself to stick with the standard accounts, which all emphasize Buckley and Goldwater's importance.

Bean further contends that the "Buckleyite wing" of the conservative movement has "promoted" and "had no problem" with affirmative action for the past 40 years. To accept this generalization requires ignoring a great deal of evidence to the contrary. The service of a determined opponent of affirmative action, William Bradford Reynolds, as Assistant Attorney General for Civil Rights during the Reagan Administration is one such fact. A bigger one is that Bean contrasts the capitulation on affirmative action by Ronald Reagan and George W. Bush to the "classical liberal tradition" upheld in the Supreme Court opinions of Justices Scalia, Thomas, and Roberts. As Bean must know, however, those justices were each nominated for the Court by one of the past three Republican presidents—Ronald Reagan, George Bush, and George W. Bush, respectively. Furthermore, Thomas

and Roberts were both appointed to important posts in the Reagan Administration, ones that launched them into the federal judiciary.

Professor Gottfried makes an argument for one revision of my essay that has considerable merit. I noted that the two preoccupations of conservatives in the first decade after *National Review* began publishing were the Cold War and the effort to roll back the New Deal, and then went on to discuss conservatism's stance on civil rights entirely in the context of the latter. Gottfried rightly points out, however, that anti-Communism explains important aspects of the conservative reaction to the civil rights movement. My account would have been better if I had examined that part of the story, too.

Gottfried finds an "incriminatory tone" in one sentence—"Conservatives have spent half a century trying to overcome the suspicion that they are indifferent to black Americans' legitimate demands, and indulgent towards people who are blatantly hostile to blacks"—where none was intended. I was trying, rather, to account for the seemingly irreparable breach between blacks and a conservatized Republican Party. As Gottfried points out, nothing conservatives have done to repair this rift has had the intended consequences. To the list he offers we could add vouchers, empowerment zones, and the faith-based initiative. Gottfried seems to think I'm asking conservatives to grovel, when I'm really asking them to stop wishing away the consequences of positions and postures they embraced at a crucial moment half a century ago.

Peter Brimelow takes a position that is a variant of the one advanced by Professors Critchlow and Bean: William Buckley may have been an important conservative writer when he opposed the civil rights movement in the 1950s and 1960s, but by the time he said he would have voted for the 1964 Civil Rights Act (2001), or that federal intervention had been necessary to end Jim Crow (2004), he was no longer worth paying attention to. I disagree with this assessment of Buckley, but disputes about Buckley don't change

the more important reality about the changes in conservatives' attitudes about civil rights. The 1964 Civil Rights Act would win handily, I submit, if its retention were to be decided by a secret ballot among the current staff of *National Review*, or the Heritage Foundation.

I suspect, further, that Brimelow (and Paul Gottfried) would vote against the law in that secret ballot. "In significant ways, the American Dilemma is as stark as ever," says Brimelow, suggesting that the costs of the civil rights movement's victory have outweighed the benefits. But in other, even more significant ways, race relations in America are better than ever. The Conservative Dilemma is that most conservatives welcome this change but regret the means by which it was brought about. I have no tidy way to resolve this tension, or even to think through it, but do believe conservatives need to grapple with it to understand their project and their country as well as they should.

Daniel Oliver thinks that Buckley came closer to resolving the Conservative Dilemma than I gave him credit for. He applauds the prudence shown by *National Review* conservatives in the 1950s and '60s, who "were willing to countenance Jim Crow a little longer" to preserve constitutional government. How long that "little longer" would have lasted is a hard question, however, and the civil rights movement's refusal to be placated by assurances that the check was in the mail is not easy to disparage. Whether countenancing Jim Crow and destroying constitutional government were mutually exclusive alternatives is another hard question. As Professors Barnett and Gutzman remind us, we need to consider the possibility that the abolition of Jim Crow, rightly undertaken, could have preserved and promoted constitutional government, rightly understood.

Where Brimelow ascribes the pro-civil rights statements Buckley made after 2000 to intellectual and character defects, Oliver, more gently, says they reflect only "a little mellowing." The fusionist position Oliver suggests, however, refuses less than it confuses. There are two possible ways to read the

position Oliver imagines Buckley taking, and the one Buckley actually took in 1998. One way is to conclude that, wrapped inside the qualifications and ellipses, Oliver is saying Buckley was right in 1957 and wrong in 2004. This, I submit, is the opposite of the position most Americans, and even most conservatives, take today. It is opposite to my own conclusion. Nevertheless, while it does not really fuse Buckley's disparate opinions, it is certainly a clear position; Mr. Oliver's letter lays out the essential elements of an argument that the benefits of extinguishing Jim Crow do not outweigh the costs, social and constitutional, of the measures by which it was extinguished. Alternatively, however, it's possible to read Oliver as saying that the fusionist position is that Buckley was right in 1957, and right again in 2004, when Buckley said he'd been wrong in 1957. We may conclude the Conservative Dilemma is indeed a severe one if it leads to fusionism that lays waste to the law of non-contradiction.

Finally, I think that Dr. Jackson takes this sentence in my essay—"Though King and Malcolm X are usually recalled as opposites, the Franciscan and the militant, Buckley's argument is that the logic of King's position carried him closer and closer to the stance, By Any Means Necessary, associated with Malcolm"—too literally. The fault, however, is mine for not making myself clearer, rather than his for not being able to extract what I meant from what I said. His objection, then, would have led to a revision, one that did not call into question Rev. King's commitment to non-violence.

The point, better stated, is that those who make bright-line distinctions, as King did against the use of violence to advance a political cause, usually feel free to walk right up to the line. At the time of his assassination in 1968, Rev. King was planning a Poor People's Campaign intended to "paralyze the nation's capital" until the government enacted a sweeping program of economic redistribution. The paralyzing techniques—sit-ins, demonstrations, civil disobedience—were

technically non-violent but massively, intentionally disruptive and, above all, flagrantly undemocratic. The people's elected representatives were to be harassed and intimidated into voting for an agenda their constituents had never endorsed or even considered. The seamless transition from trying to make every citizen a part of America's democracy prior to 1965 to elevating some citizens' demands above the workings of democracy after 1965, reminds us why so many conservatives had such grave misgivings about the civil rights movement.

UNDERSTANDING CLARENCE THOMAS

Reading Wendy Long's essay, it is difficult to recognize the book we co-authored, *Supreme Discomfort: The Divided Soul of Clarence Thomas* ("Bearing Witness," Summer 2008). Long mischaracterizes key points, runs roughshod over nuance, and looks away from important facts, obscuring the complexity that many other reviewers have called the hallmark of our book.

Let's start with the Anita Hill imbroglio. Long says that our book "fails to grapple with fundamental points about the Hill tale that don't add up." But the book mentions some of the very things she cites: that the Yale-educated Hill followed Thomas from one job to another, and kept in touch with him periodically even after the alleged harassment. We also point out that many women were among Thomas's staunchest defenders.

But the book also mentions other facts that Long chooses to ignore: that as a young man Justice Thomas was familiar with pornography, and that he at times used crude language that was eerily similar to some of the things that Hill alleged. Also, some of Thomas's female subordinates viewed some of his actions as sexually suggestive.

When it comes to affirmative action, Long fails to acknowledge that Justice Thomas was a beneficiary of the policy. While it is debatable how much race mattered in his get-

ting into Holy Cross or Yale Law School, race was among the factors that admissions officials considered. And race certainly played a part in virtually every job Thomas landed in his professional life, from his hiring as an assistant attorney general in Missouri to his appointment to the Supreme Court. The book does not attempt to diminish Justice Thomas with that fact; it is simply a fact—one that, fairly or not, is central to much of the anger directed at him. Interestingly, Long, like Thomas, seems to view affirmative action as synonymous with giving opportunity to the unqualified, which is a view we do not share.

Long goes on to say that the book repeats the “canard” that Justice Thomas is a “flunky” of Justice Antonin Scalia. All we can imagine is that she only skimmed that part of the book. The chapter in question is entitled “Scalia’s Clone?” We answer that question by saying that while Justices Scalia and Thomas often vote alike, they have distinctive brands of jurisprudence. We point out that Thomas is less deferential to precedent and more committed to originalism than Scalia. We even quote what Justice Scalia told us in an interview on that subject: “It is a slur on me as much as it is a slur on him—like I’m leading him by the nose.... It’s a slur on both of us. I don’t huddle with Clarence and say, ‘Clarence this is what we’re going to do.’”

It is understandable that Long would be eager to defend Justice Thomas, someone she once worked for and clearly admires. She also was part of the team that promoted his memoir. There is much to admire about Justice Thomas, a man whose intelligence and hard work were instrumental in his ability to rise from desperate poverty in Pin Point, Georgia, to the highest court in the land. It could only happen in America. But Justice Thomas’s most committed supporters seem to want the story to stop there. They respond to any critical treatment of his life not through the high-minded debate they often extol in their rhetoric, but through distortion that seeks to minimize what was said about Justice Thomas in the first place.

But Thomas’s life—like all lives—is more complicated than many of his boosters acknowledge. Fair-minded readers of *Supreme Discomfort* can see that our purpose is explanatory, not accusatory. Somehow, Long misses that. One can only hope it was carelessness or blind loyalty that led her to her conclusions, and not something more insidious.

Kevin Merida
Michael A. Fletcher
Washington Post
Washington, D.C.

I was flattered that Wendy E. Long commended my book *First Principles: The Jurisprudence of Clarence Thomas* in her recent essay on Justice Thomas. I write this letter simply to mention that the conventional wisdom about Thomas is now much more positive than it initially, and unfairly, was. Of the books Ms. Long discusses, only the Merida-Fletcher book paints a negative portrait. This changing perception was brought home to me recently when I was asked to participate on a roundtable on Justice Thomas’s jurisprudence at the annual meeting of the Southeastern Association of Law Schools. As one might expect at an event in which the attendees are overwhelmingly liberal, those who participated on the panel and those who asked questions from the audience tended to disagree with Thomas’s jurisprudence. Yet, that disagreement was expressed both respectfully and thoughtfully. As my book documents at length, this is a significant change from the commentary during Justice Thomas’s confirmation process and his early years on the Supreme Court. Of course, the Merida-Fletcher book indicates that, unfortunately, there is still an audience for ad hominem attacks on Clarence Thomas, but most people who have taken the time to read the opinions he has written in his 17 terms on the Court don’t take those attacks seriously anymore.

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CHINESE INFLUENCE

Mark Helprin’s unflinching look at China presents the sorts of facts that demand a new policy from Washington (“Rich Country, Strong Arms,” Summer 2008).

The current policy began in the 1970s when an internationally weak United States searched for a counterbalance to the Soviet Union, cast China in the role, and paid full asking price to Beijing by cutting completely our ties with Taiwan. The authors of this policy, such men as Nixon, Kissinger, and Carter, believed they were creating a new balance of power that would endure indefinitely. They expected the then dictatorial government in Taiwan to make a deal with Beijing over the heads of its people, to incorporate the island into China. Most importantly, they were convinced beyond the possibility of dissuasion, that this rather nasty bit of Realpolitik would open the way to political liberalization in China and the blossoming of a genuinely cordial entente between Beijing and Washington. Unfortunately the authors of this policy misjudged the character of China and the staying power of the Soviet Union.

After the Red Flag came down over the Kremlin in 1991, the United States was left with a policy lacking a rationale. China was supposed to balance the USSR, but the USSR no longer existed. What was worse, far from balancing China, the new Russia turned into her major source of advanced weaponry and an increasingly reliable partner when it came to countering U.S. policies around the world.

The end of the Cold War (and the 1989 massacre at Tiananmen Square) should have led to a fundamental rethinking of our special treatment of China. Instead, these events led to a new rationalization for the old policy. The U.S. decided that China is destined, one way or another, to become the dominant power in Asia no matter what we do. So America would attempt to get on the same side as that rising power and stay there by co-opting China whenever possible, avoid-

ing conflict of any kind, excepting China from the rhetorical human rights standards applied to other countries, continuing to trade, and attempting to foster intimate diplomatic relations, hoping against hope that maybe the regime would as a result change its hostile view of the United States.

The problem, as Helprin suggests, is that such an approach requires that we gradually sacrifice not only the interests of our allies (Taiwan, perhaps now Japan) but in fact *our own* interests. Satisfying China will require a United States vulnerable to Chinese military power and weak enough not to be able to play a major role in Asian politics—and we, for reasons not always tied directly to China, are well on the way to such a military and diplomatic posture.

Helprin is absolutely correct that we must build up our economy and our military. American industry does not need to relocate to China. The Japanese and Germans compete. Why not the United States?

The People’s Republic is far more precarious than many realize. Many specialists (and ordinary Chinese) believe the present situation is unsustainable and, sooner or later, will change. That change is unlikely to be as peaceful as was the Soviet Union’s collapse. It will be more like an earthquake, and we must begin to prepare ourselves.

We should work to solidify alliances with countries in the region that share our values (e.g., Mongolia, Japan, South Korea, Taiwan, Philippines, India; and to a considerable extent Malaysia and Indonesia, among others) and improve ties with other states worried about an expanding China (North Korea, Vietnam, and, potentially, the former Soviet States of Central Asia, and Russia herself). We need to construct an international system that like skyscrapers in Tokyo is earthquake-proof—so that the coming crisis in China can be contained there.

There is also a danger that while China’s ascent continues, she may flex her new military muscles against a neighbor, with disastrous consequences. My greatest fear is that the Chinese government will

become convinced that the United States and other powers are incapable of restraining her, or unwilling, or both, and therefore launch a war somewhere in the region to build national pride and give the regime some legitimacy. The possible targets for such an attack are found around China's entire periphery.

China might well start such a war, but I am convinced she could not finish it successfully: a "lightning" attack would move more slowly than expected; a "decapitation" of, say, the Taiwan government would fail and lead to escalation; "decisive" actions would yield confusion; unexpected players would move to secure their own interests in unanticipated ways. Chinese history is full of examples of unsuccessful uses of force, in which the adversary was grossly underestimated and China gave itself every benefit of the doubt. In today's Asia, bristling with the deadliest of weapons, the result of such a Chinese miscalculation could be a ghastly conflagration.

Arthur Waldron
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One reads Mark Helprin's brilliant essay with admiration for his stylish summary of China's rise and despair over the Washington foreign policy Establishment's failure to grasp that this rise even poses a problem. Democrats and Republicans alike take the view—hopelessly naïve in my opinion—that the Beijing regime can be coddled, cajoled, and occasionally (but only occasionally) hectored into becoming "a responsible stakeholder in the existing international order." In pursuit of this chimera we have sacrificed our markets, our capital, our technology and, to an increasing extent, our security.

Our current policy is naïve because China, unlike any other country, threatens to completely undermine the current, U.S.-dominated international order. Distracted by a ragtag band of terrorists, we have lost sight of the fact that China is a semi-terrorist outfit itself, a dictatorial regime that is extending its influence throughout the world by

creating a network of like-minded dictatorships. Pick a tyrant at random, and you will find that his principal foreign backer is a Communist dictatorship that controls 20% of the world's population, an increasing share of its industrial capacity, and a rapidly expanding military, not to mention a huge and growing cache of nuclear weapons and the means to deliver them.

Iran's President Mahmoud Ahmadinejad is feted in Beijing and was allowed the rare privilege of addressing the Chinese masses on state television, assuring them that Iran's and China's interests were "identical." Although Ahmadinejad is a radical Islamist, all too ready to bash the United States and Israel, he maintains a strict silence on the persecution of his fellow Muslims in China's Xinjiang province. In return, China uses its seat on the U.N. Security Council to oppose sanctions against Iran. Even more seriously, Iran is reportedly being used as a conduit for advanced weapons and weapons technology from China that are finding their way into Iraq and being used to kill American soldiers there.

China's "global diplomatic initiative," as it is called, is aimed at co-opting or corrupting as many governments as possible, bending them to Beijing's purposes. From Asia to Africa to Latin America, Beijing is attempting to create a sphere of influence which pays tribute to China's preeminence, a world in which corrupt oligarchies rule and human rights are relegated to the dustbin of history.

Under President Obama we will see the decommissioning of dozens of warships and the deferral of any and all new weapons systems into the next election cycle. But even under President McCain we are unlikely to see a major build-up of the kind envisioned by Helprin—necessary to maintain not only America's national security but also the preeminence of our democratic principles in the world.

The phrase "rich country, strong arms," which Helprin takes as his title, was used in Meiji Japan, but did not originate there. As I recount in my book *Hegemon: China's Plan to Dominate Asia and the World*, it

is the ancient Legalist credo. The Legalists, as it happens, were the world's first totalitarians, and their concentration of power into the hands of a ruling elite led to China's amalgamation into a single, monolithic state over two millennia ago. It concisely summarizes the goals of China's ruling elite today, a remarkable and disturbing instance of cultural continuity.

Steven Mosher
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JUDICIAL SUPREMACY

It is always a pleasure to read Jim Stoner's work, and his review of my book, *Political Foundations of Judicial Supremacy*, was no exception ("Our Robed Rulers," Summer 2008). Let me take a moment to continue the conversation a bit. Stoner notes that in an earlier work I had criticized the "faulty assumption of judicial supremacy," but he now thinks I have made my peace with it. I must admit that my ongoing work on the history and politics of judicial review has unsettled some of my earlier convictions about judicial activism. I remain convinced that originalism is the proper guide for judicial interpretation of the Constitution and that courts should be deferential to the other branches when constitutional meaning is uncertain. I also remain convinced that plenty of important constitutional decisions can and do get made outside of courts, and that judicial supremacy is a problematic starting point for thinking about American constitutionalism. I am not content with a politics that delegates fundamental questions to judges and with politicians who renounce responsibility for making hard choices about basic political issues. But, for the reasons outlined in the book, I think that is where we find ourselves and that politicians have powerful incentives to continue on this course. Changing course requires exposing the fact that judicial supremacy is not an intrinsic part of the constitutional design but has "political founda-

tions" and is contestable; holding politicians accountable for making their own constitutional judgments and acting on them; and forming political coalitions with a coherent set of constitutional principles so that it is in politicians' interest to act on their principles rather than hide from them. I'm not necessarily optimistic about getting to that point.

Keith E. Whittington
Princeton University
Princeton, NJ

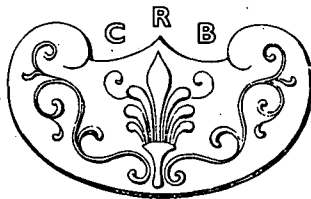
James R. Stoner, Jr., replies:

I agree with Keith Whittington that this is a conversation worth pursuing. As I understand the history of American political development, a "reconstructive" presidency that could return judges to originalism while restoring vibrant constitutional construction outside of the Supreme Court—which Whittington seems to favor but is pessimistic about seeing any time soon—would still have to be prepared by smaller steps that cut a new path and thus indicate a new way, or in other words, that weaken incentives for politicians to support judicial supremacy and for judges to invoke it. Statutory reform of jurisdiction, standing, and remedies might do the latter; clear accounting of the costs of judicial activism might help with the former. Amidst all the talk of change, can this be tried?

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THE AUDACITY OF BARACK OBAMA

Essay by Charles R. Kesler

ANY POLITICIAN WHO HAS TAKEN ON Bill and Hillary Clinton's national political machine and *won* should not be underestimated. Yet Republicans as well as many Democrats persist in underrating Barack Obama's electoral talents and, above all, his soaring political ambition.

His writerly mind, professorial bearing, and effortless self-control make it difficult to take his measure as a politician. He can seem cool, detached, unusually introspective. As a wag at the *Financial Times* put it, if John McCain's life story is the stuff of Hollywood movies, Obama's is like an off-Broadway play—it lacks action but is full of internal monologues. Raised in Hawaii and Indonesia, his father a Kenyan, his mother a sweet Midwestern atheist, Obama as a young man thought himself something of an outsider wherever he went. Smart and popular, he seemed to prefer to maintain his emotional distance, partly because he was confused about his own identity (as he explains in *Dreams from My Father*, the autobiography he published at age 33), and partly because he feared being trapped in places that were too small for his talents.

Eager to find himself by finding a community to which he could belong, he was struck, nonetheless, by the flaws or limits of every race, culture, and country he encountered. Unlike other intelligent human beings who have made the same discovery, Obama did not lower his expectations but decided that, just as he could and did choose to refashion his own identity, communities could do the same, with a little help. He spent three years as a community organizer in Chicago, but was disillusioned with the results.

Eventually he found in politics, and especially in political oratory, the path he was seeking: the way to redeem the sins of an existing community by leading it to a vision of its future, better self; and to introduce himself, proudly biracial, multicultural, and progressive, as living proof that the divisions and disappointments of the past can be overcome, if never quite left behind.

A New Majority

PART OF THE PAST THAT OBAMA WANTS to transcend is the recent history of the Democratic Party. In *The Audacity of Hope*, his second autobiography (focused on his Senate years, not quite two of them at that point) and the source of his most thoughtful campaign speeches, he treats the party elders respectfully, but not exactly warmly. He mentions Teddy Kennedy three times, calling him one of the Senate's best storytellers; devotes a page to Al Gore's emotions after his "precipitous fall"; and acknowledges "the Kerry people" who invited him to speak at the 2004 Democratic Convention. Obama goes out of his way to emphasize that he is a newcomer to the party who couldn't even get a floor pass to the 2000 Convention. Reflecting on the elections of 2000 and 2004, he confesses that "I sometimes felt as if I were watching the psychodrama of the Baby Boom generation—a tale rooted in old grudges and revenge plots hatched on a handful of college campuses long ago...."

Obama praises Bill Clinton more highly than any other contemporary Democrat, because Clinton recognized the staleness of the

old political debate between Left and Right and came close to moving beyond it with his politics of the Third Way, which "tapped into the pragmatic, nonideological attitude of the majority of Americans." But Clinton blew it, and the author gradually lets you know it. First, he regrets Clinton's "clumsy and transparent" gestures to the Reagan Democrats, and his "frighteningly cold-hearted" use of other people (e.g., "the execution of a mentally retarded death row inmate" before a crucial primary). Then Obama notes sadly that Clinton's policies—"recognizably progressive if modest in their goals"—had commanded broad public support, but that the president had never been able, "despite a booming economy," to turn that support into a governing coalition. Finally, he gently accuses Clinton of the worst offense of all: strengthening the forces of conservatism. Due to his "personal lapses" and careless triangulations that ceded more and more ground to the Right, Clinton prepared the way for George W. Bush's victory in 2000.

In his campaign speeches, Obama can't afford to be so candid—he needs Hillary and Bill's supporters, after all—but he subtly makes his point. For example, in his Acceptance Speech in Denver, the single biggest speech of the campaign, he laid at Bill Clinton's feet the oldest backhanded compliment in the books, thanking the former president "who last night made the case for change as only he can make it...." That's a disguised double insult: it reminds the discerning ear of Clinton's characteristic bloviation, and then of his political failings (when you see Clinton, you're reminded why the Democrats need Obama).

Granted, Obama holds Clinton to higher standards than he does the other party elders. Jimmy Carter, Gore, Kerry—these gentlemen lacked the political talent that Clinton squandered, in Obama's estimation, and they were innocent of political daring. Their shortcomings are palliated, to some extent, by the fact that the times were not auspicious. Still, Obama is fairly clear that if the party is to move forward it must return to earlier exemplars, and especially to its heroes who brought about major political changes lasting for a generation or more. This was the context of his comparison of Clinton to Ronald Reagan, which raised such a ruckus early in the campaign:

I do think that, for example, the 1980 election was different. I think Ronald Reagan changed the trajectory of America in a way that Richard Nixon did not and in a way that Bill Clinton did not. He put us on a fundamentally different path because the country was ready for it.

The comparison of Clinton to Nixon is delicious in its own right, but Obama's larger point is that Clinton was no Reagan, partly because the times were different but mostly, as he points out in his book, because Clinton was undisciplined and conceded too much to the Right. As tokens of Obama's seriousness about fundamental political change, *The Audacity of Hope* mentions Franklin D. Roosevelt more often than it does any living Democratic politician; and it features a long, interesting discussion of the Declaration of Independence and the Constitution, the political point of which is to reestablish the Democrats' claim to speak for American ideals, the touchstone of every electoral realignment.

Thus the commentators who interpret Obama as a new kind of post-partisan political figure get it exactly wrong. It's true that he wants to stop "arguing about the same ole stuff," as he told Planned Parenthood; he wants to move beyond the decades-long debate between liberalism and conservatism. Bill Clinton wished for the same thing in 1992, as did George W. Bush in 2000. The 42nd and 43rd presidents had doctrines that they hoped would precipitate this magic synthesis—the Third Way, and compassionate conservatism, respectively. What's interesting, as political scientist James W. Ceaser noted in these pages ("What a Long, Strange Race It's Been," Spring 2008), is that Obama does not feel the need for such a doctrine. Nor does John McCain. The 2008 race is taking place squarely within the familiar ideological framework of liberalism and conservatism, but with McCain promising some maverick departures from the norm (while still accepting the norm), and Obama talking up hope and the need

for change. The change needed, however, is for nothing less than a full-blown electoral earthquake that will permanently shatter the 50-50 America of the past four presidential elections. He thinks liberals can get beyond the old debate by finally winning it.

"Eking out a bare Democratic majority isn't good enough," he writes in *The Audacity of Hope*. "What's needed is a broad majority of Americans—Democrats, Republicans, and independents of good will...." After the New Hampshire primary, he told his supporters "you can be the new majority who can lead this nation out of a long political darkness." A month later, after winning the Wisconsin primary, he explained what he called "my central premise," that "the only way we will bring about real change in America is if we can bring new people into the process, if we can attract young people, if we can attract independents, if we can stop fighting with Republicans and try to bring some over to our side. I want to form a working majority for change." That's easier said than done, of course, and likely would require several elections. Speaking to the AFL-CIO in 2003, he laid out the long march that would be necessary:

I happen to be a proponent of a single-payer universal health care program.... [a] single-payer health care plan, a universal health care plan. And that's what I'd like to see. But as all of you know, we may not get there immediately. Because first we have to take back the White House, we have to take back the Senate, and we have to take back the House.

As a matter of fact, he is not officially a proponent of a single-payer health care plan; his 2008 platform stops far short of that. Nor has he repeated this sweeping, candid endorsement of his ultimate goal, which might be described by that hoary but accurate epithet, socialized medicine. In the meantime, however, the Democrats in 2006 recaptured both the Senate and the House of Representatives. If after 2008 the Democratic party controls all three elective branches, then his "working majority for change" will be in a position to go to work.

A New Lincoln

IF THE LEADING EDGE OF OBAMA'S AUDACITY is his desire to bring about fundamental political change at a time when every other leading Democrat has given up on it or lacks the gifts to achieve it, his daring shows itself too in his confidence that he is the man for the job, the man of the hour. His self-confidence has been noted, of course, and well parodied. It's even

been parodied unconsciously, as by Mark Morford, an online columnist in San Francisco:

Many spiritually advanced people I know (not cowering religiously, mind you, but deeply spiritual) identify Obama as a Lightworker, that rare kind of attuned being who has the ability to lead us not merely to new foreign policies or health care plans...but who can actually help usher in a new way of being on the planet, of relating and connecting and engaging with this bizarre earthly experiment. These kinds of people actually help us evolve. They are philosophers and peacemakers of a very high order, and they speak not just to reason or emotion, but to the soul.

Yet the fact is that the precise character of Obama's ambition has not been well understood. In his own terms, he seeks to bring about enduring political change even as (to mention those he invokes in this connection) Ronald Reagan, John F. Kennedy, Franklin Roosevelt, Abraham Lincoln, and Thomas Jefferson did before him. (He didn't concur with Reagan's change, to be sure.)

It's Obama's account of Lincoln that deserves particular attention. Lincolnian language appears and reappears in Obama's speeches. In fact, he compares himself indirectly and sometimes directly to the first Republican president. The speech that initially put Obama on the map, his 2002 denunciation of the pending Iraq War, concludes in a poor paraphrase of the Gettysburg Address: "Nor should we allow those who would march off and pay the ultimate sacrifice, who would prove the full measure of devotion with their blood, to make such an awful sacrifice in vain." He announced his candidacy in Springfield, Illinois, a place central to Lincoln's political career and site of some of his great speeches, including the "House Divided" and his affecting farewell to the city as he left to assume the presidency. In his speech, Obama does his best to appropriate Lincoln's memory:

And that is why, in the shadow of the Old State Capitol, where Lincoln once called on a divided house to stand together...I stand before you today to announce my candidacy for President.... By ourselves, this change will not happen. Divided, we are bound to fail. But the life of a tall, gangly, self-made Springfield lawyer tells us that a different future is possible. He tells us that there is power in words...in conviction. That beneath all the differences of race and region, faith and station, we are one people. He tells us that there is power

in hope. As Lincoln organized the forces arrayed against slavery, he was heard to say: "Of strange, discordant, and even hostile elements, we gathered from the four winds, and formed and fought the battle through." That is our purpose here today. That's why I'm in this race. Not just to hold an office, but to gather with you to transform a nation.... Together, starting today, let us finish the work that needs to be done, and usher in a new birth of freedom on this Earth.

Obama identifies himself (as we say today) with Lincoln: Abe is not the only "tall, gangly, self-made" lawyer primed for greatness that the audience is supposed to recognize. Though it ends with another paraphrase of the Gettysburg Address, the passage—and the whole speech—is meant to recall Lincoln's "House Divided" speech, which kicked off the Illinois senate campaign in 1858 against Stephen Douglas. The quotation about the "four winds" is Lincoln's description of the new Republican Party, forged from fragments of the fading Whig and Free Soil parties, and reaching out to anti-slavery Democrats and centrists.

Thus Obama compares the new majority he seeks to build to the majority party that Lincoln helped to create. He tries to inspire Democrats by appealing to the founder of the generations-long, post-bellum Republican majority. This is partisan ambition of a high order, masquerading as high-toned bipartisanship or post-partisanship: Obama speaks as though Lincoln were trying to overcome the country's divisions by calling for unity, for cooperation in the spirit of national renewal. In fact, Lincoln's point was that the Union would "become *all* one thing, or *all* the other." It would become either all free, or all slave. Lincoln's road to unity ran through division, through forcing the country to choose. Obama's point is similar, despite his soothing language: our divisions will be healed once the country is safely in the hands of a new liberal, Democratic majority.

Obama spoke in 2005 at the opening of the Lincoln Presidential Library and Museum in Springfield. On that occasion, he talked more of the man himself. Lincoln exhibits "a fundamental element of the American character," he said, "a belief that we can constantly remake ourselves to fit our larger dreams." He hailed Lincoln's "repeated acts of self-creation, the insistence that... we can recast the wilderness of the American landscape and the American heart into something better, something finer...." The wilderness of the American heart—now that's an expression, and a sentiment, that Lincoln never uttered. Is it Obama's own view of the American soul's desolation?

Lincoln's life ends up sounding a lot like Obama's. "Lincoln embodies our deepest myths," Obama averred. "It is a mythology that drives us still." Here is the stark difference between the two men. Lincoln never thought of himself as pursuing or being driven by a myth, even though his life and death acquired, in the eyes of others, mythic significance. At any rate, when Obama later contributed a version of the speech to *Time* magazine, he altered a line to read:

In Lincoln's rise from poverty, his ultimate mastery of language and law, his capacity to overcome loss and remain determined in the face of repeated defeat—in all this, he reminded me not just of my own struggles. He also reminded me of a larger, fundamental element of human life—the enduring belief that we can constantly remake ourselves to fit our larger dreams.

Peggy Noonan, with her usual keen perception, took him to task in the *Wall Street Journal* for having explained "that he's a lot like Abraham Lincoln, only sort of better." In *The Audacity of Hope*, Obama charmingly relates the story, pooh-poohing the notion that he was seriously "comparing myself to Lincoln." But Noonan had it right.

Wright and Wrongs

TO MAKE POSSIBLE A NEW LIBERAL MAJORITY, Obama has to rehabilitate liberalism's reputation, to separate it from the extremist cultural politics of the Sixties and the burden of defending Big Government. Bill Clinton began this renewal in the 1990s, proclaiming "the era of big government is over" and preaching the Third Way gospel of opportunity, responsibility, and community. Obama's politics is a continuation and deepening of Clinton's efforts, aided by a much more favorable political environment—further removed from Reagan's shadow; coming after two terms of a deeply unpopular Republican president; in the midst of two wars, one of them tainted by shifting (and frequently extravagant) aims, premature claims of victory, and strategic mistakes; and with the final two months before the election dominated by a market meltdown frequently said to be the most serious since the Great Depression.

Obama's debt to Clinton is real, though usually (especially lately) unacknowledged. Obama far outdistances Clinton, however, in telling the story of America in a way that reinforces a renascent liberalism. The term is perhaps inexact, because Obama (like Hillary Clinton now) prefers to call himself "progressive" rather than liberal. But the difference is tactical and semantic, not substantive. More than any Democratic

presidential candidate since JFK and especially FDR, Obama has an interpretation of American history that justifies what he wants to do. Not incidentally, Obama's version also has the advantage of countering Reagan's view of the country's history as the working out of American exceptionalism (including divine favor), popular good sense, limited government, free market economics, and moral traditionalism.

Obama is a good writer whose strength is narrative, and his account of America is a kind of story, mixing social, intellectual, and political history, that begins with the founding—with the Declaration of Independence and Constitution. (Not for him is Reagan's emphasis on the Puritans and their "shining city on a hill.") In profound ways, for Obama the black church replaces the Puritans in his understanding of America.) He tries to construct a new consensus view of the country that acknowledges, and contextualizes, traditional views in a way meant to be reassuring. In *The Audacity of Hope* he quotes the Declaration's famous sentence on self-evident truths and then comments: "Those simple words are our starting point as Americans; they describe not only the foundations of our government but the substance of our common creed." Though few Americans could "trace the genesis of the Declaration...to its roots in eighteenth-century liberal and republican thought," every American understands its "essential idea":

that we are born into this world free, all of us; that each of us arrives with a bundle of rights that can't be taken away by any person or any state without just cause; that through our own agency we can, and must, make of our lives what we will....

It sounds Lincolnian, until you notice that the "bundle of rights" is not said to be natural, exactly, nor true exactly, but simply understood by Americans without their quite grasping those rights' origin in 18th-century political thought. Would that old understanding, say, Jefferson's, still be authoritative for us now, or are we permitted (or forced?) to understand them in a way more congenial to our own felt needs and desires? Obama soon makes clear that Jefferson and the other founders were less than faithful to the universal principles they proclaimed. Like a good law professor, he lines up evidence and argument on both sides before concluding that, in fact, the founders probably did not understand those principles as universal but rather as confined to the white race. The "spirit of liberty," he writes, "didn't extend, in the minds of the founders, to the slaves who worked their fields, made their beds, and nursed their children." In the end, then, Obama's interpretation is the op-

posite of Lincoln's, who devoted some of his finest pages to proving that the founders regarded slavery as a moral and political evil because it violated the rights of man.

The dog that didn't bark is Obama's renowned speech on race, the one devoted to starting a national conversation on the subject and to putting the Rev. Jeremiah Wright's notorious comments in their proper context. The words "all men are created equal" do not appear in it. And so it is a very different appeal, with a very different view of America, than one would find in, say, Martin Luther King's great speech at the Lincoln Memorial. Obama mentions the Constitution briefly, noting its "ideal of equal citizenship" and that it "promised its people liberty, and justice, and a union that could be and should be perfected over time." But he does not mention the conclusion that he arrives at in his book, namely, that the Constitution's "people" did not refer to or include blacks, and especially not black slaves. Although he regards both the Declaration and the Constitution as racist documents originally, he does not emphasize the point in his speech because it would confirm Rev. Wright's fundamental charge, that the U.S. is a racist country. And the point of Obama's speech in Philadelphia, at the National Constitution Center, was not merely to repeat his condemnation of Wright's remarks "in unequivocal terms" but to put the whole controversy behind him.

In truth, Obama's evaluation of Wright's statements was very equivocal. He calls the reverend's charges "not only wrong but divisive," that is, untimely, because the American people are "hungry" for a "message of unity" right now, as delivered by the junior senator from Illinois. Wright expressed "a profoundly distorted view of this country," Obama says, "a view that sees white racism as endemic, and that elevates what is wrong with America above all that we know is right with America...." What that means becomes clearer a little later, when Obama declares that "the profound mistake of Reverend Wright's sermons is...that he spoke as if our society was static; as if no progress has been made." But Obama's own candidacy confirms "that America can change. That is the true genius of this nation. What we have already achieved gives us hope—the audacity to hope—for what we can and must achieve tomorrow." In short, Wright was not wrong that America was a racist nation, with racist principles; he was wrong, however, to speak as though the country is as racist as it used to be. "America can change," not in the sense of living up to its first principles but in the opposite sense of moving away from them. Except, that is, from the deepest principle of all, which expresses "the true genius of this nation"—our belief in change itself.

Wright's eruptions were dangerous to Obama not merely because they raised questions about his judgment in having Wright as his pastor, and because they raised doubts about his ability to be a unifying, post-racial figure. They were dangerous above all because they represented a particularly virulent strain of the spirit of Sixties' radicalism, and shook Obama's claim to have left all that behind him and behind his new movement for change. As he said in his second, more decisive repudiation of Rev. Wright (April 29, 2008), "the reason our campaign has been so successful is because we had moved beyond these old arguments." Because he did not actually disagree with Wright's fundamental charge but could not say so openly, Obama's reasons for denouncing the reverend became oddly personal. "I don't think that he showed much concern for me," Obama told reporters. Indeed, Wright's performance at the National Press Club was "a show of disrespect to me. It's...also, I think, an insult to what we've been trying to do in this campaign."

A Renewed Liberalism

BUT OBAMA DISAGREES EMPHATICALLY WITH Rev. Wright on the question of change. He thinks Wright is trapped in the past, even as McCain and the Republicans are—two very different pasts, doubtless, but equally out of touch with the country and its future. A proper understanding of America's past—centered on change and the country's openness to it—will make sense of the present and liberate us to make a brighter, more unified future, claims Obama. His understanding of the past thus pays lip service to such terms as self-evident truths, original intent, and first principles, but quickly changes the subject to values, visions, dreams, ideals, myths, and narratives. This is a postmodern "move." We can't know or share truth, postmodernists assert, but we can share stories, and thus construct a community of shared meaning.

At times, Obama seems to agree with this. "Implicit...in the very idea of ordered liberty," he writes in *The Audacity of Hope*, is "a rejection of absolute truth, the infallibility of any idea or ideology or theology or 'ism,' any tyrannical consistency that might lock future generations into a single, unalterable course...." Is the idea that human freedom is right, slavery wrong, thus to be rejected lest we embrace an "absolute truth"? After criticizing the founders for allegedly overlooking precisely this universal principle, Obama now warns against all such truths. More remarkable still, he praises the same founders for being "suspicious of abstraction"! "It may be the vision of the Founders that inspires us," he writes, "but it was their realism, their practical-

ity and flexibility and curiosity, that ensured the Union's survival." In other words, the founders' integrity is shown precisely by their not believing too deeply in their own principles. Their deepest principle, so to say, was their sheer flexibility or openness to change.

Yet Obama is by no means a complete post-modernist. As a decent man, he believes in justice. (Accordingly, in yet another twist, he honors Lincoln for pursuing Lincoln's "own absolute truths" with a saving "humility.") And as a self-described progressive, he believes in change, i.e., he believes that change is almost always synonymous with improvement. He is heartened by the fact that political and constitutional change led to the Union becoming all free. He doesn't dwell on the fact that change could have led, instead, as Lincoln had feared, to the Union becoming all slave.

As an African-American, he knows of course that blacks had to wait a long time for change to be their friend. So he is no simple-minded progressive. In fact, what's most interesting about him as a writer is his struggle with these powerful, and conflicting, intellectual currents.

As a politician, however, he trods an easier, more familiar path. He sets up, in *The Audacity of Hope*, a debate between Justice Antonin Scalia's and Justice Stephen Breyer's opinions on how to interpret the Constitution. After much toing-and-froing—"I'm not unsympathetic to Justice Scalia's position.... I understand the strict constructionists' reverence for the Founders..."—Obama comes down, surprise, on Breyer's side. The Constitution "is not a static but rather a living document, and must be read in the context of an ever-changing world." He expressed the same point when he announced his presidential candidacy: "The genius of our founders is that they designed a system of government that can be changed." That sounds, and is, anodyne—in an "ever-changing world," how much genius does it take to design a government that can change?—but it's the only formulation that permits him to show that the founders were the original progressives.

Obama sees the American story as a blend of two themes, individualism (symbolized in the Declaration) and unity (symbolized in the Constitution's commitment to "a more perfect Union"). The latter phrase, plucked from the Preamble, has long been a favorite of liberals, and was used in the same way by, for example, Bill Clinton. Unity means being your brother's, and sister's, keeper; it means coming together "as one American family." Obama explains: "if fate causes us to stumble or fall, our larger American family will be there to lift us up." He doesn't explain who get to be the parents in our new national family. Membership in this community confers or protects our "dignity," in the sense of

guaranteeing "a basic standard of living" and effectively sharing "life's risks and rewards for the benefit of each and the good of all." Conservatives prefer to leave us "to face fate by ourselves," he notes, because they believe in "the Social Darwinist idea," which "requires no sacrifice on the part of those...who have won life's lottery...."

Thus unity is for the sake of "dignity and respect," which require both "social justice" and "economic justice." The latter ramifies widely, demanding, for instance, that "if you work in America you should not be poor"; that a college education should be every child's "birthright"; and that every American should have broadband access. Obama does not follow FDR, who turned such socio-economic goods into rights and called for enshrining them in a Second Bill of Rights. Chastened by the right-wing and middle-class backlash against welfare rights, Obama again follows the example of Bill Clinton, who reconceived such benefits as components of "opportunity." As Obama presents it: "opportunity is yours if you're willing to reach for it and work for it. It's the idea that while there are few guarantees in life, you should be able to count on a job that pays the bills; health care for when you get sick; a pension for when you retire; an education for your children that will allow them to fulfill their God-given potential." These are not rights, exactly, because that would imply Big Government to provide them. These are things that government will guarantee or help guarantee, so that you can take advantage of your opportunities and be protected in case your opportunities take advantage of you. Not big but merely "active government" will be needed to provide these "guarantees," Obama promises.

The difficulty is that the logic of these provisions is not very different from that of Rooseveltian socio-economic rights. Obama says, "it matters little if you have the right to sit at the front of the bus if you can't afford the bus fare; it matters little if you have the right to sit at the lunch counter if you can't afford the lunch." Actually, it matters a great deal (for human dignity, in fact), but the larger point is that this argument, that formal rights matter little without accompanying substantive or socio-economic advantages, leads easily to turning those advantages into rights. Doesn't the little old lady have a right to a decent lunch? And if she can't afford it, shouldn't government pay? One doesn't know whether to regard the new formulation of provisions for "opportunity" as a prudent step away from Big Government, or as a covert invitation to it. Jobs at a "living wage," universal health insurance or even a single-payer system, generous (and rising) social security coverage, universal support for college tuition, tax increases to pay for it all—Obama's will be a very active government, indeed.

A New Politics for a New Time

THE TENETS OF OBAMA'S PROGRESSIVISM are certainly not original. His is a renewed rather than a new liberalism; the principal change is not the message but the messenger. Nonetheless, he is an extraordinary orator and political strategist who has a real chance to win the new majority he seeks. Accordingly, in the unfolding electoral marathon of 2008 he champions what he calls "the politics of hope."

To begin with, hope confronts "the politics of cynicism." Cynicism wears many hats in Obama's speeches: the "politics of anything goes," the tactics of "spin masters" and "negative ad peddlers" who seek to divide us, the viewpoint of those who think "politics has become a business and not a mission," the "can't-do, won't-do, won't-even-try style of politics," the resort to "stale tactics to scare the voters," the effort to "make a big election about small things." The nefarious cynics deny the nation's problems, then blame them on someone else ("the other party, or gay people, or immigrants"). And when the people look away "in disillusionment and frustration," the "cynics, and the lobbyists, and the special interests" move in to fill the void, and turn government "into a game only they can afford to play."

Cynicism is Obama's all-purpose explanation for the "gridlock and polarization" that characterize our small politics today, that rob Americans of "our sense of common purpose—our sense of higher purpose." To put it differently, cynicism means the politics of self-interest, and it is his equivalent of the deeper and richer institutional analysis that once was American liberalism's stock-in-trade. Liberals used to criticize institutions like the congressional committee system, the separation of powers, and political parties dominated by large donors and local interests, on the theory that they perverted American politics by marrying narrow self-interest to mechanistic checks and balances. The result, supposedly, was the obstruction of progressive reform and "the deadlock of democracy." Obama simplifies this elaborate protest literature into an indictment of the Tom DeLays and Karl Roves of contemporary Washington, who have induced public apathy and a paralyzing loss of faith in the future.

The antidote for this widespread cynicism is hope, which is the quality that a visionary leader can awaken in the public, at long last. "We know the challenges.... We've talked about them for years," Obama argues.

What's stopped us is the failure of leadership, the smallness of our politics—the ease with which we're distracted by the petty and trivial, our chronic avoidance of tough decisions, our preference for scor-

ing cheap political points instead of rolling up our sleeves and building a working consensus to tackle big problems.

There are good ten-point plans aplenty, he observes. They have all been blocked by the pervasive cynicism in Washington, and concerning Washington, over the past three decades or more. "It's time to turn the page," he likes to say, but the problem is that "we haven't had leaders who can inspire the American people to rally behind a common purpose and a higher purpose."

Now, "leadership" as the way to overcome the American government's (purported) chronic gridlock is one of the oldest of old liberal tropes, classically treated by Woodrow Wilson. Obama's prescription for American problems would come as no surprise to JFK and FDR, who in this respect are Wilson's students. Perhaps Obama pays more court to a politically engaged citizenry than did FDR or Wilson. ("Men are as clay in the hands of the consummate leader," wrote Wilson in a confident moment.) Yet all of these figures were eager in some degree to rouse the public from its cynical slumbers. And Obama admits that though the times must be right, it's up to the leader to recognize and exploit the favorable moment, to open the public's eyes to the possibility, indeed the imminence, of a political leap forward.

If "the genius of our founders" is a system of government "that can be changed," it's perforce up to future generations to rally to the task. In every critical moment, Obama affirms, "a new generation has risen up and done what's needed to be done. Today...it is time for our generation to answer that call." Echoing the passing of the torch that JFK celebrated on behalf of his generation—as well as the heroic exertions of the civil rights movement—Obama in announcing his candidacy adjured his followers, "Let's be the generation that ends poverty in America.... Let's be the generation that finally tackles our health care crisis.... Let's be the generation that finally frees America from the tyranny of oil." He continued:

That is why this campaign can't only be about me. It must be about us—it must be about what we can do together. This campaign must be the occasion, the vehicle, of your hopes, and your dreams.

His oft-repeated refrain about "the moment" speaks to this generational awareness. "The moment" is when a generation becomes conscious of itself and ready to act to change America, when it realizes that "yes, we can" change the political system by acting as one. This awakening that makes possible all subsequent political reform is what Obama refers to when he pro-

claims, "We are the ones we've been waiting for. We are the change that we seek." The "moment" is when hope vanquishes cynicism, when the sudden realization of generational unity finally makes hope itself viable. Obama invites new voters, college students, independents, and disaffected Republicans to join in this new, more sober Woodstock.

The clash between hope and cynicism pits the future against the past, "a new politics for a new time" against the same old, same old. Despite Obama's occasional impatience with progressivism's rosy view of human nature, his reliance on the formula of the past versus the future—and on the "living Constitution" to weave them together—confirms his deep debt to Wilsonian-style Progressivism, which has dominated the Democratic Party's consciousness for a hundred years. As they say, the oldest word in American politics is "new."

Obama can be "a proud citizen of the United States and a fellow citizen of the world," as he announced in his Berlin speech, because the generational currents are not confined to individual nations, especially not in the modern wired and globalized community of nations. When discussing international politics, however, Obama adjusts the generational polarity to hope versus fear. The old view of international relations, fervently embraced by the current Bush Administration, is dominated by fear—of other nations, of enemies within and without, of loss of sovereignty. But the 21st century should try to build "a more hopeful world" that will finally realize for all its inhabitants FDR's Four Freedoms—freedom from fear, from want, freedom of speech and expression, freedom to worship.

The return to FDR may signal that Obama desires a more muscular foreign policy than liberals or conservatives realize, as his remarks elsewhere about incursions into Pakistan and hunting down Osama bin Laden suggest. In any event, the war in Afghanistan, which he supports and wants to intensify, may eventu-

ally make the Iraq War look like child's play. Obama recognizes that there are many forces in the world, including terrorism, that America must rightly fear. On the whole, though, his proposed tilt from fear to hope in our foreign policy promises a greater role for "strong diplomacy" and for "a world that stands as one." The problem is that uniting the world is much harder than uniting Americans; as the number of "different stories" increases, the power of "common hopes" must, too, in order to unify the diverse narratives. Based on his analysis of such hopes in the Cold War—a major theme in his Berlin speech—Obama needs a dose of reality. He hopes for a better world of international unity in which many walls will fall: "the walls between the countries with the most and those with the least...the walls between races and tribes; natives and immigrants; Christian and Muslim and Jew..." But strong walls often make good neighbors. And he speaks of the fall of the Berlin Wall as if no one pushed it or ever stood guard by it.

Audacity and Hope

OBAMA IS CAREFUL TO DISTINGUISH HOPE from blind optimism. Hope is not "the almost willful ignorance that thinks... the health care crisis will solve itself if we just ignore it." "Hope is not ignoring...the challenges that stand between you and your dreams." On the contrary, hope is "imagining, and then fighting for, and then working for, struggling for what did not seem possible before."

You know, there is a moment in the life of every generation when that spirit has to come through, if we are to make our mark on history, when we decide to cast aside the fear and the doubt, when we're not willing to settle for what the cynics tell us we have to accept, but instead we're willing to reach for what we know in our gut is possible...when we determine that we're

going to keep the dream alive for those who still hunger for opportunity and still thirst for justice.

That's why he insists on "the audacity of hope," which he calls "God's greatest gift to us, the bedrock of this nation; a belief in things not seen; a belief that there are better days ahead."

This mixture of divine and secular assertions boils down to a moment of historical clarity: hope is when you recover your faith in progress, when you envision "the better days ahead," but also when you resolve not to wait passively for them but to pursue them courageously: the audacity of hope. To the leader belongs the awesome power to transmit this vision of the future to the people, to allow those who walked in darkness to see a great light, and to organize them for the "march into the future" that he alone can lead. Despite Obama's efforts to offload to or share some of this responsibility with the awakened people, it falls primarily on his head as the prophet of the moment. Though he expresses doubts about his ability and invites the people to correct him when he goes wrong, he knows that he is the one.

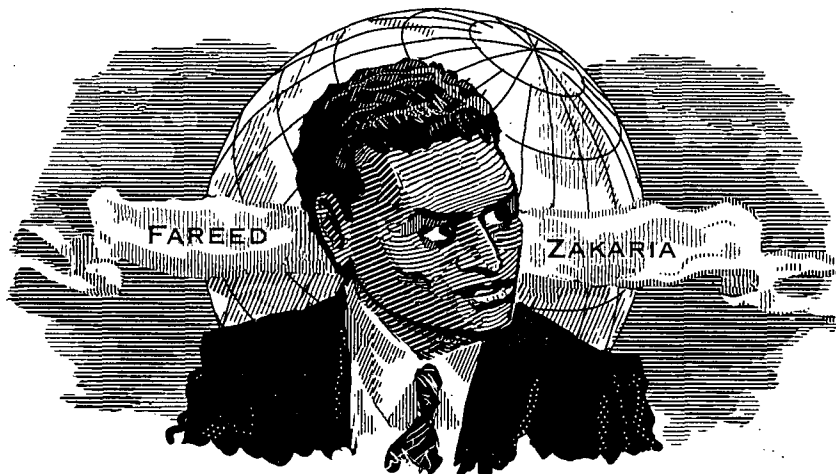
Sometimes it helps to take the long view. Audacity is a curious word with two meanings, which reflect a genuine moral ambiguity. It means both boldness, daring, confidence—and reckless daring, rashness, foolhardiness. It can be a good or a bad thing, a virtue or a vice. Hope, by contrast, is a passion; in the language of the medieval schools, hope aims at a future, arduous, and possible good. It doesn't always attain that good, however. There is also hope as a theological virtue, but presumably Obama doesn't mean to offer eternal happiness to his followers. His vision is of earthly happiness, wholeness, and justice. As he explained to Americans in 2004, in his debut at the Democratic National Convention, his name, Barack, means "blessed."

Charles R. Kesler is editor of the Claremont Review of Books.

Book Review by Geràrd Alexander

SIRENS OF DAVOS

The Post-American World, by Fareed Zakaria.
W.W. Norton & Co., 288 pages, \$25.95



BORN IN INDIA OF PROMINENT PROFESSIONAL parents, his father a moderate Muslim active in India's dominant Congress Party, Fareed Zakaria came to America to attend Yale and then Harvard. Not long out of school, as a young managing editor of *Foreign Affairs*, he began to make his mark. In 1997, he punctured irrational exuberance about post-Cold War democratization by pointing out that many nascent republics were in fact "illiberal democracies." They might hold elections but, he warned, they did not respect individual rights. The next year he published *From Wealth to Power*, a chronicle of America's rise to global prominence as an economic and geopolitical power.

Within weeks of 9/11, Zakaria, by then editor of *Newsweek's* international edition, asked in an influential essay "Why Do They Hate Us?" and answered that Islamist rage sprang from civilizational humiliation and blocked reformism in the Muslim world. In 2003, he published *The Future of Freedom*, an expanded version of his "Illiberal Democracy" article, in which he elaborated his concern that democracy had deep institutional and cultural prerequisites that too many of its newest converts lacked. And as a further example of intellectual courage, Zakaria has eloquently spoken up for capitalism: "It creates a body of people independent from the state power. People like to talk about civil society, and that is great, but what you need is something that can stand up to organized state authority. The only things that have been able to do that are the Church and capitalism."

These sentiments make him an unusual and important public intellectual. One suspects that Nehruvian socialism and Third Worldist grievance-collecting would have come easy to a

young Muslim coming of age in a Congress Party household in Bombay in the 1970s and '80s. Yale and Harvard would have been kind to such fashionable orthodoxies. But to his immense credit, Zakaria defied the fashionable bromides of the previous half-century and expressed to his readers the vaguely conservative insights that America has generally been a force for good in the world, and that the spread of markets has lifted hundreds of millions out of poverty.

ALAS, HIS LATEST VOLUME REVEALS THAT Zakaria has been seduced after all. The glittering panels of Davos may have proven irresistible to him. *The Post-American World's* central theme is that America's relative power is ebbing in the face of advances by other countries. China's tenacious growth and massive scale make it the most conspicuous component of the "rise of the rest." Oil exporters are also amassing vast wealth, middle classes are forming worldwide, and billionaires and skyscrapers are popping up all over. All these changes stem from globalization and liberalization, forces that America has long championed. America can and should adjust intelligently to its new situation, however, because the U.S. still has a lot going for it, starting with its cultural magnetism and the world's best system of higher education (though K-12 could use a lot of work). Its leaders would be wise to be less arrogant and to pay—and be seen paying—a decent respect to the opinions of mankind.

What's strange about these claims is that there is nothing strange about them at all. There is not a sentiment in the preceding paragraph that you haven't read dozens of times already somewhere else: they form the conventional

wisdom of the West's media and its diplomatic and international business communities. Predictions of a decline in America's relative power have been commonplace for over 30 years, since well before Paul Kennedy's 1987 best-seller, *The Rise and Fall of the Great Powers*. More recently a similar warning has been sounded by Zbigniew Brzezinski, Charles Kupchan, and others. Granted, *The Post-American World's* reception has been affected by its warmed-over character. Although many reviews have been fawning, a few note that, as *The Economist* put it gingerly, Zakaria "might have paused more often to pay tribute to those who originated many of his ideas." In the kid-gloved world of international punditry, those are harsh words.

But the problem is not merely that Zakaria's new book is telling us what we've already heard. Like all conventional wisdom, there is less to it than meets the eye. No doubt economic gains are changing the world, endowing many states with wealth today and power tomorrow. But extrapolation is a risky business. OPEC budget surpluses have come—and gone—before. Japan, Inc.'s much-advertised takeover of the world stalled and ushered in a decade of stagnation. China's current breathtaking growth might last for decades—or, just as plausibly, might descend into the same morass of corruption and rent-seeking that plagues most developing economies.

The trends that Zakaria and so many others notice are real. But an even more interesting trend is how many extrapolations of recent trends have proven wrong. If only conventional wisdom could reflect that insight.

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INSIDE THE BOX

Terror and Consent: The Wars for the Twenty-first Century,
by Philip Bobbitt. Alfred A. Knopf, 688 pages, \$35

PHILIP BOBBITT IS THE HERBERT WECHSLER Professor of Federal Jurisprudence at Columbia University School of Law, a distinguished lecturer and senior fellow at the University of Texas School of Law, and a member of the Hoover Institution's task force on national security and law. He was counselor on international law in President Clinton's Department of State; and on Clinton's National Security Council staff Bobbitt was in charge of intelligence and, later, strategic planning. His new book is a serious attempt to place terrorist and anti-terrorist warfare in the context of the history of war—indeed, of the nature of human relationships. This is a big, ambitious book that draws its conclusions about terrorism today from nothing less than a made to order *Weltanschauung*—complete with new terminology and reminiscent of Hegel more than Toynbee—which describes how and why states and those who have rebelled against them have behaved and will behave. Instead of familiar sloganeering on such questions as whether to torture terrorists or to intervene in places like Iraq, Bobbitt brings some genuine historical insights to bear on the sweeping question of how America should lead mankind into the future. Here then a quintessential Establishmentarian gives the impression that he is thinking “outside the box.” But no....

After 529 sometimes brilliant, usually convoluted, often confused pages, Bobbitt quotes the British historian Sir Michael Howard to sum up his conclusion about why the 21st-century wars by and against terrorists came about and what Americans should do:

[A]n explicit American hegemony may appear preferable to the messy compromises of the existing order, but if it is nakedly based on commercial interests and military power it will lack all legitimacy. Terror will continue and, worse, widespread sympathy with terror. But American power placed at the service of an international community legitimised by representative institutions and the rule of law, accepting its constraints and inadequacies but continually working to improve them: that is a very different matter. It is by doing this that the US has earned admiration, respect, and indeed affection throughout the world over the past half century.

Boilerplate! The author's apparent flights of unfettered reason boil down to thoughts and policies that are standard issue in the U.S. national security bureaucracy—the sort of wisdom one encounters in, say, the charter of the Department of Homeland Security or the papers of recent NSC staffers. This is the intellectual novocaine that is injected into senior officers at our war colleges, that makes five-star conferees nod, the wisdom that most of our foundations pay for. In short, this book defines the “box” within which all the parts of our foreign policy Establishment rattle dysfunctionally.

According to Bobbitt, today's terrorism is the effort that certain cultures make to resist the spread of what he calls “market states of consent,” of which the U.S. is the exemplar, and to ensure for themselves what he terms “states of terror.” To defeat them, Bobbitt counsels turning the U.S. armed forces into a vast “constabulary” that would occupy all places and pacify all peoples threatened by “terror” and reform them into “states of consent.” Terror itself would be the enemy. And while these forces would have to kill some non-consenting irreconcilables, American troops would operate primarily by applying positive and negative incentives to whole populations. All their actions would have to be ruled by law, by which Bobbitt means the consensus of the international community (more on that below) and the U.S. domestic laws that would flow from that consensus.

EVERY HISTORICAL ERA, ARGUES BOBBITT, has a typical form of government or society, and a corresponding type of terrorism. The Crusades, he tells us, were medieval society's terrorism. Bobbitt claims that “the crusaders” massacred Jews and that the whole enterprise was blessed by the likes of St. Bernard of Clairvaux. But in fact these massacres were the work of heretics who targeted the Church hierarchy and the wealthy before turning to others. Reducing the Crusades to these banes of Europe's secular and religious authorities shows the shallowness of Bobbitt's erudition. He argues that the princely states of the Renaissance imposed their writ through mercenary armies and in turn spawned lawless bands of mercenaries. The kingly states of the 17th and 18th centuries had to fight off revolts from pretenders to the throne as well as from motley feudal remnants. The revolutionary state-nations of the late 18th and

early 19th centuries (inexplicably Bobbitt lumps together Napoleon and the American Founders) claimed to give meaning to life through nationhood and hence had to fight pirates and anarchists, who spread terror to challenge the very idea of nationalism. The 19th and 20th-century nation-state claimed to ensure economic security and progress, but had to combat terrorist groups—various permutations of Communism and fascism that murdered civilians in order to deliver them from socio-economic exploitation. The postmodern “market state,” however, exists to maximize choice because postmodern society and government are no longer rigidly hierarchical, but based on fluid networks. No surprise then that terrorists in the age of the “market state” should be animated by opposition to choice, and that they should organize themselves in fluid networks that exploit the opportunities the market state affords for wreaking massive damage.

THE THEORETICAL FRAMEWORK'S SECOND part, superimposed on the first, is the distinction between “states of consent” and “states of terror.” The author tells us that this is also the distinction between “legitimate” or “law abiding” states, and illegitimate ones based on lawless force. This distinction, which he substitutes for Aristotle's distinction between regimes that pursue the good of the whole and those seeking the good of the ruler exclusively, is problematic. Whenever the reader comes across Bobbitt's copious references to “law” he is tempted to ask: “whose law?” More important, are there not many bases for consent? Why should those who refuse consent to the prevailing socio-political forms be deemed lawless or terrorist?

This objection is especially relevant to Bobbitt's so-called “market state.” Its quintessential job, he says, is physical protection of civilians against all major disorders—specifically including natural disasters and deprivations of “human rights,” especially the rights of women—in order to maximize choice. But some people, notes Bobbitt, choose precisely to live according to definitions of human rights different from his. By what right does he pretend to restrict the choices of, say, Muslims (women as well), to be left alone to live polygamously? Bobbitt answers almost well: there are some things to which man may not consent, rights that he may not give up

because they are integral to his humanity. He cites the Declaration of Independence to this effect. Crucially, however, he neglects what gives the Declaration its power: Nature and Nature's God. Without that, the notion of inherent rights is just another opinion.

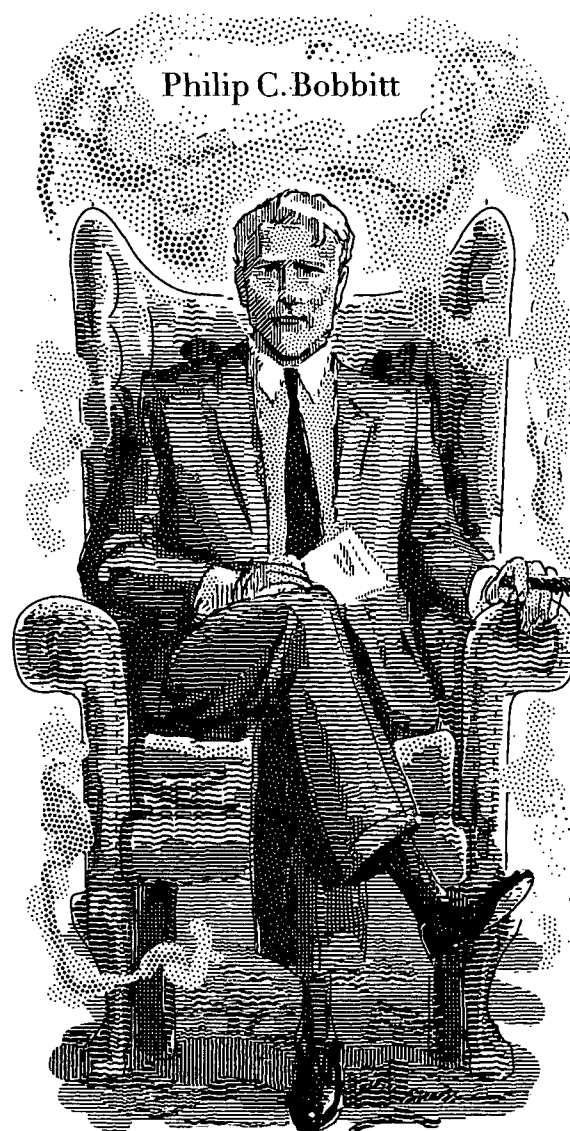
Bobbitt also neglects that though such first principles, rightly understood, establish the inherent superiority of well-ordered human freedom, and hence our absolute right to make war on anyone who impairs our freedom, they do not authorize us in any way to restrict those who are not part of our body politic who choose to live in denial of human rights. This is the understanding that our founders embodied in the Declaration. By contrast, Bobbitt and the Establishment he represents take the superiority of diversity or multiplicity of choice as warrant for restricting those who choose against it. They believe it is right, indeed obligatory, to interfere with and to constrain other people's benighted choices—for example, to stop ethnic cleansing or genocide in places like Darfur and Rwanda and Iraq. Thus interfering and constraining, forcing men to be free, is “the new way of war.”

YET WHAT BOBBITT PROPOSES, WHAT OUR Establishment recommends, is not war in the dictionary sense of the word. He acknowledges that genocide in Darfur is the work of Sudan's government, and proposes radically increasing the number of “peacekeepers” there—but certainly not to make war on Sudan's Arab government or on the Arab population carrying out the genocide. But then to do what? He does not say. He knows that our involvement in foreign quarrels brings those quarrels to America's shores, that many who terrorize Americans do it because they feel that our actions, our very being, are in opposition to them. But this does not move Bobbitt either to renounce intervention or to intervene to kill, crush, and intimidate. Instead, his and our Establishment's solution is to do the same thing at home and abroad, namely, to flood civilian life with largely non-lethal militarized police (or military in police mode) with lots of intelligence, lots of administrative capacity, lots of means of bribery (it helps compliance), and lots of legitimacy.

Whence the legitimacy? Bobbitt is adamant that it must come from law. Although he attempts to qualify or at least to obscure his legal positivism, in practice law means for him any published procedure on which there is “consensus.” But whose consensus? He denies that the consensus of the American people, by itself, is enough. “Law” must mean the consensus of officials who transcend individual polities and somehow represent the entire world, people like himself. Only such consensus can legitimize the constraints that need to be imposed on the

world in order for the “market state” to function. The reader is not surprised that Bobbitt does not ask by what right such people are mankind's legitimate lawgivers. That is because the law that inspires and underlies his construct is the indirect kind of the European Union and of the United Nations.

How fantastic is the notion that such international institutions can curb terrorism may be seen by the fact that in March 2008 the Islamic Conference (over a fourth of the United Nations' membership) persuaded the U.N. Human Rights Council to recommend amending the Universal Declaration of Human Rights to



Philip C. Bobbitt

remove protection from any speech or act that insults Islam, as a first step toward criminalizing any insult to Muslims or the Prophet Mohammed.

Consensus? No doubt, there is lots of it within our foreign policy Establishment, and Professor Bobbitt's book expresses it better than most. Indeed, it makes the argument for universal democratization and human rights better than Robert Kagan does, the argument for coercive interrogation better than John Yoo—never mind George W. Bush—and the Liberal Internationalist case for waging war through

incentives, bribery, and agreement with foreign governments better than the Democratic candidates for president in 2004 and 2008. In this book Philip Bobbitt has made the case for that consensus more fully, more subtly, and more persuasively than I have ever seen.

The problem is that his arguments are largely irrelevant to war and that the Establishmentarians who make them are out of touch with reality. To wit:

(1) Exciting as “The nation-state is passé!” may be as a topic at five-star conferences and as ardently as Eurocrats and their American admirers may wish it were true, the fact is that humanity today lives in such states, and that the ones from which terrorists come looking for us, whence the money and inspiration for terrorism come, are thoroughly capable of turning terrorism on or off. They have chosen to turn it on. What will it take to make them turn it off?

(2) Only the peoples of any given nation-state can decide what they regard as legitimate. Three decades of Euro-rule by unelected bureaucrats who regard each other as embodying Legitimacy should have taught us that all peoples so ruled end up regarding their rulers as self-serving, and would not consider sacrificing anything at their behest. Hence any attempt to substitute the kind of international consensus dear to Bobbitt for traditional American decisions about America's national interest would Europeanize America.

(3) Armies are blunt instruments of war, essentially negative in character. Any further regimentation, not to mention militarization, of American civilian life will further dry up the only true source of domestic security, namely, the American people's immunological reaction against those in our midst who may not have the country's best interests at heart. This fellow feeling, not razor wire and identity cards and “security,” kept America secure and civil during the 20th century. Thinking of the U.S. government's role at home in terms commensurable with notions of “the new way of war” and “market states” is no less ludicrous for being logical.

(4) The proper use of armies is to crush enemies, not to mix with them for hazy ends. Even as the makers of “international consensus” find in Islamic violence reasons to respect Islamists of which they had scarcely been aware, so they may one day find that an America that crushes its tormentors and moves on might not be so unsophisticated after all.

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GEORGIA ON MY MIND

The New Cold War: Putin's Russia and the Threat to the West,
by Edward Lucas. Palgrave Macmillan, 272 pages, \$26.95

SINCE PETER THE GREAT, THE QUESTION where Russia is going has vexed diplomats and observers. The Soviet interlude offered a moment of tragic clarity regarding Moscow's strategic objectives—characterized by expansion, fueled by Communism, and backed by massive military force. The Soviet Union's collapse in 1991 bred confusion and disappointment within Russia, but great hopes in Western Europe and the U.S. In the 1990s, many Russia experts and policymakers in the West assumed that the country was heading toward a future of liberal democracy and peaceful relations with its neighbors.

The war in Georgia served as a rude awakening. Instead of enjoying the wealth from its gas and oil resources and developing a modern, democratic state, Moscow sent armored divisions across the Caucasus. This, according to Edward Lucas, was to be expected. Russians always had other ideas about how and where to direct their country, and over the past several years Vladimir Putin skillfully, coldly started to turn those aspirations into reality. In his book *The New Cold War*, Lucas, a well-informed correspondent for *The Economist*, chronicles the development of this new Russia that few in Europe and the U.S. predicted or expected. Written well before the war in Georgia, this book, read now, is prescient, narrating the rise of Putin's Russia as well as the troubling insouciance of the West, which together are leading to a resurgent Russian power.

Lucas presents his argument clearly and with plenty of details: Russia "is reverting to Soviet behavior at home and abroad, and in its contemptuous disregard for Western norms." The evidence is manifold: a long list of murdered journalists, bellicose posturing toward the former Soviet republics, political and military support to many pariah (and anti-U.S.) regimes, tight state control of the energy market, and so on. Russia's military foray into Georgia (followed by a symbolic, but telling, naval exercise in the Caribbean with Venezuela) now leaves no doubt as to Russian intentions. Lucas's book aptly describes Russia's gradual emergence as a neo-tsarist, authoritarian state ruled by a small elite of former KGB agents.

Russia's path has been clear for a while. It aims to restore some authority over its former

empire, purge foreign (mainly Western) influence at home, gain leverage over Europe, and, above all, bring back that perceived greatness it enjoyed until 1991. At the same time, Putin and his courtiers are stuffing their private accounts with billions of dollars, and enjoying all the perks of quasi-regal power.

But the book is more than an account of Moscow's new ruling class and its strategic designs. What makes *The New Cold War* required



Coat of arms of the Russian Federation.
The design was adopted in 1992,
and is based on a version dating to
Peter the Great and earlier.

reading after the Russo-Georgian war is its strong warning to the West not to be passive toward Moscow's aggressive foreign policy. As Lucas puts it, the West is "inattentive and complacent, partly due to greed and wishful thinking, and partly because of serious distractions elsewhere." The U.S. has certainly responded clearly and substantially to Russia's latest sally, shipping humanitarian aid to Georgia courtesy of the U.S. Navy and promising serious financial aid. Yet, there are voices in Europe, particularly in Italy these days, that are calling for a "strategic partnership" with Moscow, effectively sacrificing Georgia and other likely targets of Russian pressure. Though Lucas obviously does not address these current events, he considers such complaisance naïve at best, and at worst willfully indifferent to serious violations of human rights in Russia and the continued expansion of Russian control over its periphery (and possibly farther away).

HOW SERIOUS IS RUSSIA'S ABILITY TO RE-gain its former imperial glory? After all, Russia is a hollow military power. An almost nonexistent Georgian army was able to shoot down several Russian aircraft and damage a Russian ship—a clear sign that Moscow does not have a top-notch army and navy. Aware of this weakness, Lucas argues that we are unlikely to see Russian armored divisions rolling toward the Elbe River, or Russian submarines threatening shipping in the Atlantic. Instead, Russia will create security challenges on the periphery, for instance, by selling anti-aircraft systems to Syria or fast torpedoes to Iran, or by invading fragile, weak states such as Georgia. It will even bring back Cold War memories by sending a few ships and Blackjack supersonic bombers to Venezuela. But Russia's army is bloated and poorly managed, its navy in serious disrepair, and its strategic nuclear forces possibly vulnerable to a U.S. first strike. Military power will not bring back Russian *grandeur*.

Tight domestic control, internal popular support, and oil and gas money, combined with Western shortsightedness, may do the trick, however. First of all, Putin and his policies enjoy high levels of popular support—a fact that puzzles many Westerners. In part this is because under Putin, as Lucas explains, "so few have lost, and so many have gained." The few losers are unpopular oligarchs (e.g., Mikhail Khodorkovsky, former head of Yukos, now in a penal colony in Siberia), journalists (think of Anna Politkovskaya, shot dead in 2006), or politicians with liberal leanings (like Gary Kasparov, constantly harassed by the police). The many who have benefited now enjoy higher standards of living, freedom to travel abroad, and prospects for the future that are considerably better than under the Soviet regime.

Second, Putin has capitalized on nationalist feelings, stoking xenophobia and revanchist desires. His well-known statement that the demise of the USSR was the "greatest geopolitical catastrophe" of the 20th century shocked the West but earned wide approval in Russia. Similarly, as Lucas describes, Putin exhibits a strong tendency to reinterpret history by whitewashing Soviet crimes, while blaming the West for many of the problems Russia suffered in the '90s. Putin has even expressed admiration for Stalin—whom he

compares to Bismarck—a leader forced to make tough choices but who succeeded in modernizing a country, not to mention defeating Hitler and “liberating” half of Europe.

But perhaps the most important factor in Russia’s rejuvenation is her vast reserves of gas and oil. The author notes two clashing views of this wealth’s significance. The West imagines that Russia is interested in selling as much of its resources as possible to maximize its wealth; business, in other words, trumps all other concerns and aspirations. The Kremlin, by contrast, argues Lucas, considers Russia’s energy resources a political or strategic tool with which it can divide Europe and exercise enormous leverage over the weaker East European and Caucasian states. Its goal is to monopolize the supply of gas to Europe by controlling all pipelines linking Russian suppliers with European consumers. Even if some of these pipelines—such as the Nord Stream pipeline in the Baltic Sea, designed to link Russia with Western Europe and avoid Ukraine and Poland—are costly and inefficient, they would bring considerable benefits to Russia, which could, for instance, shut down Ukraine’s gas supply without affecting deliveries to Germany. A future “Orange Revolution” could then be put under serious strain.

IF RUSSIA’S PATH IS WORRISOME, LUCAS THINKS it even more worrisome that the West has neglected to forge a common strategy to deal with the threat. What should be done to counter Russia’s belligerence? Lucas urges the West to present a united trans-Atlantic front, be firm in negotiations, protect strategic assets such as refineries and pipelines from Russian acquisitions, and, above all, recognize Moscow’s aspirations and tactics for what they are.

He is deeply pessimistic about Russia’s chances to evolve into anything resembling a liberal democracy; in truth, Russia is turning into a sort of postmodern tsarist state with strong fascist overtones—a “fraudulent democracy” (or as the Kremlin calls it, a “sovereign democracy.”)

The prospects for a more coherent Western strategy are, alas, dim. Europe’s reliance on Russian natural gas weakens the resolve of European leaders to stand up to Moscow’s neo-imperialism. It is telling that, in response to the war in Georgia, Washington sent the U.S. Navy to the Black Sea, followed by half a billion dollars in aid, while the E.U. debated whether civilian monitors should be dispatched to the region (pending Russia’s approval) and promised less than ten million dollars in humanitarian aid. The divide is not only between Europe and the U.S., but within Europe—a deep and lasting divide. While Italian prime minister Silvio Berlusconi was expressing support for Russia, the leaders of Poland, Ukraine, and the Baltic states were flying to Tbilisi to stand next to the Georgian president. Lucas’s call for strategic unity is noble, but I doubt it will materialize.

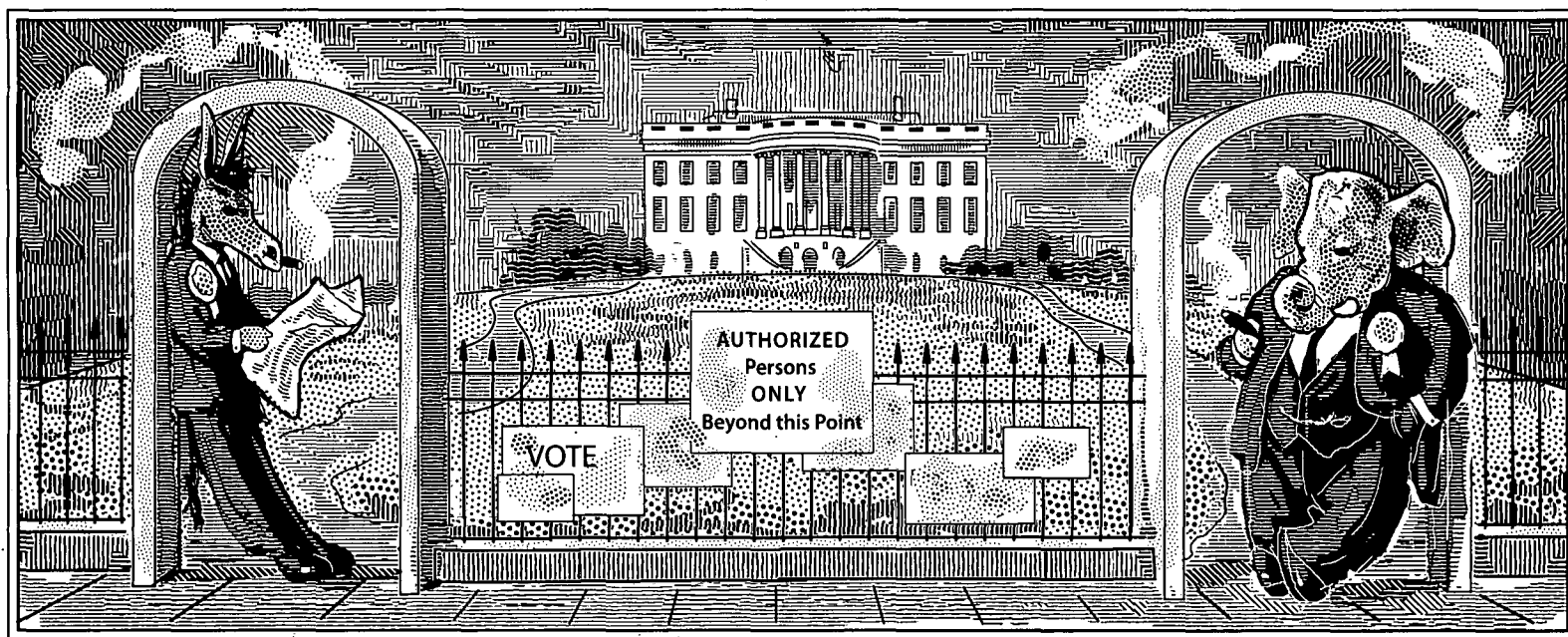
There is also a deeper problem, one that Lucas does not address explicitly. Vast segments of Western society, including most policymakers and pundits, especially in Western Europe, are unable to envisage a return to a pre-1990, or a pre-1917, chess game in the region. In their view, the market and elite-managed international institutions such as the E.U. have taken over the mechanisms of international relations, and it is simply inconceivable that a state would be willing to pursue policies that sacrifice financial gain for the sake of strategic leverage or glory. As somebody told me a while ago in Italy, it is impossible to believe that Rus-

sia would shut down a gas pipeline merely to exert political pressure. The fact that Russia already had done so in the case of Ukraine, and that it is building pipelines that would allow it to do so with greater political impact in the future—and that it is willing to risk losing the confidence of foreign investors in order to restore militarily its influence over its neighbors—does nothing to shake this naïve faith. If reality contradicts the Western vision of a new world order, too bad for reality.

ARE WE DOOMED, THEN, TO ENTER INTO another confrontation with Russia, a “new Cold War,” as the title of the book implies? Some have criticized Lucas’s argument as alarmist. After all, the Cold War was a global conflict, in which Moscow’s goal was to defeat capitalism and extend Communist ideology. Today’s Russia lacks such global aspirations and capabilities. Yet it is clear that a confrontation is taking place, of a different nature and scope, with the possibility of becoming violent. The Russo-Georgian war is a sign that Moscow has not abandoned her imperial ambitions and is willing to use violence to punish those who stand in her way. This is not the end but the beginning of a contest for influence over Eurasia, with consequences as serious as those in the past. *The New Cold War* is a much-needed book because it dismantles any naïve hope that the past few months were a surprising anomaly in the political trajectory of Russia.

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THE PRESIDENTIAL NOMINATION MESS



IT IS A PECULIARITY OF AMERICAN GOVERNMENT that after more than 200 years no fixed system exists for selecting the president of the United States. Almost every nomination contest brings with it a different arrangement for the schedule of primaries, the allocation of delegates, and the regulation of campaign finance. No one can get used to the system before it has changed again.

This year was surely no exception. The start date of the process was moved up to January 3, with the Iowa caucus virtually ushering in the New Year. There was an unprecedented bunching of more than 20 contests, including both California and New York, on February 5, dubbed "Tsunami Tuesday," to distinguish it from "Mega-super Tuesday" (March 2) of 2004, and from merely "Super Tuesday" before that. The nation is running out of superlatives. With so many contests scheduled up front, most of the candidates formally announced their candidacies and began intense fundraising in the spring of 2007, a full year and a half before the final election. A battery of debates followed, saturating the cable networks throughout the summer and fall.

If, as Alexis de Tocqueville once remarked, the presidential election period marks a kind of "national crisis" in which the political elites are distracted from the normal business of governing, then America is courting danger to the point of obsession.

Given this frontloaded schedule, most analysts predicted that the nomination decisions would be resolved by early February. Things didn't work out that way, especially for the

Democrats. What was supposed to be a mad dash turned into a grueling marathon. Judgments about the system seemed to shift as time went on. The early chorus of objections that the contests would be settled too quickly, precluding adequate deliberation, gave way by May to plaintive objections that the campaign had gone on too long, risking division to the party and the nation. By June, all seemed to be for reform, though as usual not the same reform nor for the same reasons.

Is this any way to pick the men (and women) who would be president?

Rules of the Game

TO INVOKE THE WOODEN TERMINOLOGY OF political science, the presidential nomination system has not achieved full "institutionalization." In an institutionalized process, rules precede the activity to be governed and structure it in patterned ways; and they remain in place long enough to produce reasonably clear effects. In sports, that's known as the "rules of the game." Nothing approaching this salutary authority governs the nominating process. Candidates and their supporters regularly scheme to change state laws and (in the case of the Democrats) party rules to try to benefit their campaigns, though they are frequently burned by their own machinations. Because each year's arrangement is different, the candidates must make new strategic assessments. (Rudy Giuliani, for example, disastrously concluded that the 2008 schedule allowed him to ignore all the contests up to Florida, a decision netting him one

delegate for his \$59 million investment). Non-institutionalization has become, all on its own, a factor that influences who is nominated, helping candidates who judge better—or perhaps just guess rightly—the effects of the rules on their race. Whether this skill is a sound predictor of presidential performance is another matter.

Imagine what the rest of the world must think at observing this spectacle. As late as November 20, 2007, six weeks before the provisional start of the campaign, the secretary of state of New Hampshire was preparing to move his state's primary date up (to before Christmas!) to preempt a possible move by the state of Michigan. Two of the largest states (Michigan and Florida) went on to hold primary elections that, in the case of the Democrats, were initially not recognized by the national party because they contravened national party rules—which of course did not prevent Hillary Clinton, who had signed off on the rules, from solemnly demanding, as a matter of highest principle, that the people's voice be heard. And it was truly bizarre that Puerto Rico, a U.S. territory with no vote in the presidential election, had been allocated almost twice as many delegates in the Democratic Party as West Virginia, a state potentially critical to the general election. (The excuse was that since actual delegates after a certain point in the process do not matter anyhow, it would be clever to make a symbolic gesture to Hispanic voters.) Finally, there was Rush Limbaugh's "Operation Chaos," which asked his legions of ditto-heads to vote in Democratic races to gum up the results.

Far from being a model, our presidential selection process is unworthy of a banana repub-

lic. To add insult to injury, it is unclear where, if anywhere, the effective authority resides to implement any serious reform. Each state can change its own laws, but not the laws of any other state. Each national party—or, in the ideal case, the two of them working together—can influence state laws, but they are loath to take on this assignment; and the states, in any case, are not obliged to listen. As for the federal government, it is disputed to this day whether Congress has the constitutional power to legislate in this domain.

How did we get ourselves into this situation? No one, surely, could have planned it this way. And no one ever did.

The Founders' Intent

IF BLAME MUST BE ASSIGNED, A PORTION OF it must go to the founders for instituting a system that never fully succeeded in managing the problem. But it was certainly not for want of trying. The Constitution, contrary to popular impression, created not three but four national institutions: the presidency, the Congress, the

Supreme Court, and the presidential selection system (centered on the Electoral College). The question of presidential selection was just that important to the founders, and they created a system that was meant to institutionalize the process from start to finish—from the gathering and winnowing phase up through the final election. The Constitution, in other words, was intended to control “nominating” as well as electing: the electors, meeting in their respective states, would vote for two people for president (at least one of whom had to come from another state), thus nominating and electing at the same time. When the votes were collected and opened on the floor of the House of Representatives, the winner (if he had a majority) would become president, and the runner-up would become vice president.

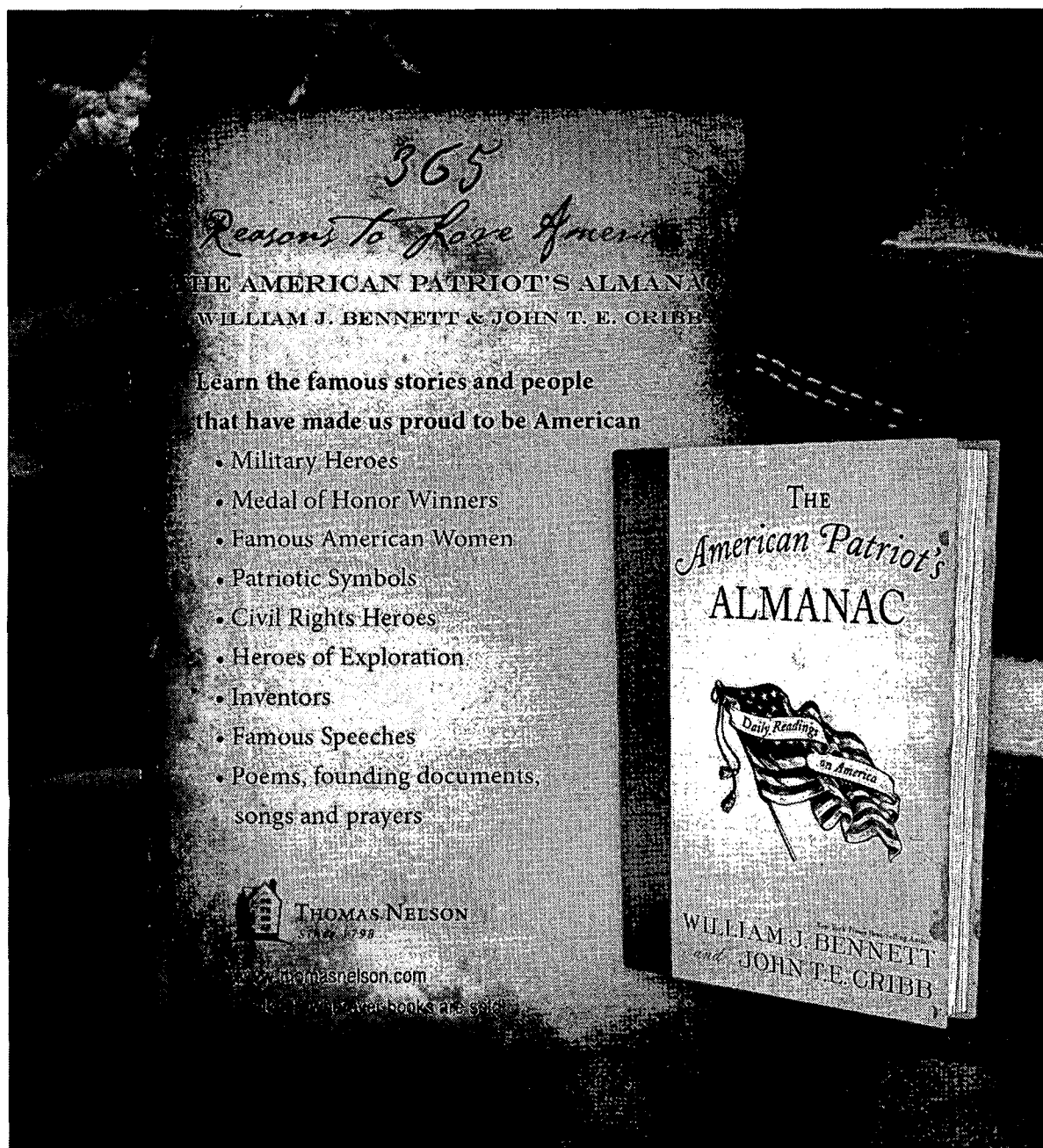
The nominating plan, as matters turned out, worked as intended only when there was no real need for it. The electors twice nominated the one individual in American history, George Washington, whose choice was never in doubt. By the time Washington stepped down, national political parties, which the founders never

expected, had begun to impose their influence on the electors' nominating function; promoting the parties' own candidates for president and vice president and effectively removing this process from constitutional jurisdiction.

Despite this failure, the founders introduced a comprehensive way of looking at the selection process that continued to exercise a broad influence. One of their simplest but most important principles was to consider the presidential selection system a means to an end, not an end in itself. Its purpose was to elevate a meritorious person to the presidency, in a way that promoted the Constitution's design for the office. Their explanation of the system did not celebrate the process as a positive event in its own right, much less as the consummation of American democracy. They focused instead on the need to avoid the many potential problems and dangers attendant on the choice of a chief executive.

The principal objective was to choose a sound statesman, someone “pre-eminent for ability and virtue,” in the words of *The Federalist*, by a method that satisfied republican standards of legitimacy. (The system, with electors to be chosen by the state legislatures or the public, was a remarkably democratic arrangement for its day.) How to identify a person of “virtue” was the crux of the issue. The best way would be a judgment based largely on the individual's record of public service, as determined finally by the electors. The founders' intent was above all to prevent having the decision turn on a demonstration of skill in the “popular arts” as displayed in a campaign. They were deeply fearful of leaders deploying popular oratory as the means of winning distinction; this would open the door to demagoguery, which, as the ancients had shown, was the greatest threat to the maintenance of moderate popular government. By demagoguery, the founders did not mean merely the fomenting of class envy, or harsh, angry appeals to regressive forces; they also had in mind the softer, more artful designs of a Pericles or a Caesar, who appealed to hopeful expectations, “those brilliant appearances of genius and patriotism, which, like transient meteors, sometimes mislead as well as dazzle” (*Federalist* 68). The greatest demagogues would be those who escaped the label altogether.

The selection system was also designed to promote the more elusive goal of shaping the tone of the nation's political class. By sending a clear signal of how and how not to be considered for the presidency, the system was intended to structure the careers of the most spirited leaders, discouraging them from cultivating the popular arts and encouraging them to establish strong records of public service. The task was to make virtue the ally of interest, in order to avoid the danger expressed in Alexander Pope's cou-



plet: "The same ambition can destroy or save / And makes a patriot as it makes a knave."

King Caucus

THE FOUNDERS' NOMINATION SYSTEM could not survive the advent of political parties during Washington's second administration. Since that time, some four or five (depending on how you count them) methods of selecting presidential candidates have been tried: the congressional caucus (1796–1820); a brief interlude of nonpartisan self-selection (1824–1828); the national nominating convention under the control of party organizations (1832–1908); a "mixed" system balancing popular choice with the previous convention system (1912–1968); and the modern system of popular choice (since 1972).

When national parties took control of the nominating function in 1796, it was not by design but in fulfillment of the very logic of a party in a democratic system. To win power through election requires a party to concentrate support behind one person. Otherwise, party supporters might divide their votes among several, allowing a candidate from the opposition party to win. Political parties did not seek to subvert the Constitution's aims for the selection system, but in assuming the function of nominating they added a criterion for selection—fidelity to party principles—that was and still is in some tension with the constitutional spirit of the presidency.

But how would the parties decide—or who among them would decide—on the nominees for executive office? At first, the task fell, *faute de mieux*, to a meeting of the delegation of the party's members of Congress. The originators of the congressional caucus, whoever they were, never viewed themselves as founding a new institution, however. Only afterwards, when the caucus was challenged beginning in the mid-1810s, did its defenders begin to think in these terms. They justified it modestly on the practical grounds that the caucus was the only arrangement available at the time. It also served the party's purposes, and gave the choice to a group well suited to judge the candidates' qualities. In this sense, at least, it kept the founders' goal in mind.

The caucus came under criticism for placing too much power in the hands of a small Washington group, in contrast to the more popular plan envisaged in the Constitution, which had left nomination to electors from each state. In a brilliant public relations ploy, someone branded the institution "King Caucus," a label that helped to insure the institution's demise. A further, more trenchant criticism was that the caucus involved members of Congress in the task of selecting the president, which, as John Quincy

Adams noted, "places the President in a state of undue subserviency to the members of the legislature." (Adams might well have had in mind the strong signals sent by some Republican members of Congress to President James Madison in 1812 to go to war with Great Britain.)

The greatest problem the caucus confronted, however, stemmed from growing opposition to party nomination of any kind. When the Federalist Party collapsed as James Monroe assumed the presidency in 1817, the nation was left with only one party. Monroe responded not just by declaring victory for the Democratic-Republicans, but by calling for the elimination of all vestiges of partisanship, which he called the "curse of the country." His aim, which won the day among much of the political class in Washington, was the restoration of the founders' original idea of nonpartisanship. This was the meaning of the Era of Good Feelings.

Monroe's position put enormous pressure on the caucus system, which many Americans now wished to jettison outright. Even those who still believed in political parties found themselves on the defensive. If there were only one party, and all presidential aspirants were faithful members, what need was there any longer to subordinate the individual to the party? There was also the undeniable fact that with only a single party, the caucus was not merely nominating a presidential candidate but picking the president as well.

The institution found itself with fewer and fewer supporters, and as the 1824 election approached the "King" was well on his way to exile.

Putting Party Over Person

THE 1824 ELECTION TOOK PLACE WITHOUT binding party nominations and featured, as a result, a multiplicity of candidates (Adams, Andrew Jackson, William Crawford, and Henry Clay). With no formal starting point, electoral activity began very early, and with so many contenders no one received an electoral majority. The election had to be decided in the House, where Clay backed Adams (and became secretary of state), earning him Jackson's wrath as the "Judas of the west." One might compare this contest to the early stage of certain modern nomination races, where each candidate, devising his own strategy and platform, vies to carve out enough votes from limited constituencies to finish among the top two or three contenders, enabling him or her to go on. The appeals can be narrow and demagogic.

Most who look back on this election treat it as an aberration. But it only became so because of certain deliberate steps taken afterwards that changed the character of the nomination system. The changes were orchestrated by one of the great institution builders of American history, Martin Van Buren. The inevitable consequence of a non-

"... measuring him by the sentiment of his country, a sentiment he was bound as a statesman to consult, [Lincoln] was swift, zealous, radical, and determined."

— FREDERICK DOUGLASS, APRIL 14, 1876

LINCOLN AT PEORIA

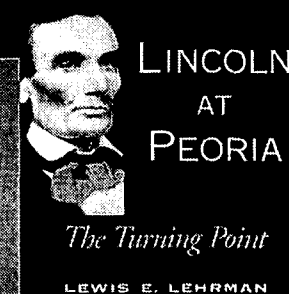
The Turning Point

by Lewis E. Lehrman

Lincoln at Peoria: The Turning Point explains how Lincoln's speech at Peoria on October 16, 1854 was the turning point in the development of his antislavery campaign and his political career and thought. Here, Lincoln detailed his opposition to slavery's extension and his determination to defend America's Founding document from those who denied that the Declaration of Independence applied to black Americans.

Students of Abraham Lincoln know the canon of his major speeches — from his Lyceum Speech of 1838 to his "Final Remarks" delivered from a White House window, days before he was murdered in 1865. Less well-known are the two extraordinary speeches given at Springfield and Peoria two weeks apart in 1854. They marked Mr. Lincoln's reentry into the politics of Illinois and, as he could not know, his preparation for the Presidency in 1861. These Lincoln addresses catapulted him into the debates over slavery which dominated Illinois and national politics for the rest of the decade. Lincoln delivered the substance of these arguments several times — certainly in Springfield on October 4, 1854, for which there are only press reports. A longer version came twelve days later in Peoria. To understand President Abraham Lincoln, one must understand the Peoria speech of October 16, 1854. It forms the foundation of his politics and principles, in the 1850s and in his Presidency.

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Mr. Lehrman convincingly argues that Peoria marks the inflection-point in Lincoln's political development, when he discovered both the essence of the cause he embraced and the most persuasive way to convey it. At Peoria, Lincoln ceased to be an unremarkable Whig politician, concerned with the usual party platforms on internal improvements and protective tariffs. He gave evidence for the first time of his scrupulous study of the American founding. That fall day was, Mr. Lehrman suggests, the moment when Lincoln became Lincoln."

partisan system, Van Buren argued, would be a repetition of the general outcome of 1824, with many candidates participating and an electoral majority forming only in the rare circumstance of an extraordinarily popular candidate (as Andrew Jackson proved to be in 1828). Leading a coterie of leaders from the old Jeffersonian party, Van Buren set out to rescue the nation from the system of 1824. His aim was not merely to revive his own party but to restore two-party competition—indeed, not just to restore it, but to make it into a permanent and respectable part of the political system. Even his partisan goal, which was second to his grander institutional reform, required founding and supporting an opposition party. One party alone would be like a single hand trying to clap. It would not work.

Van Buren criticized the nonpartisan system because it removed all restraints on individual ambition and opened the presidential election to an endless campaign, which would be conducted on the basis of popular leadership and demagoguery. He feared that such an election process would divide and destroy the nation, most likely by fomenting sectional appeals. Van Buren's solution could be summed up in one phrase: put party over person. National parties, established on safe and broad national principles, would be the gateways through which anyone seeking the presidency would have to pass. This system could hardly depart more dramatically from the original constitutional plan, but it was inspired by the founders' aim of managing ambition and controlling popular leadership for the common good.

As an institution builder Van Buren understood that the task of resuscitating parties could not rely on a change in the Constitution. It was an extra-legal task. Van Buren's ingenious and paradoxical stratagem was to try to connect his project to the most powerful, popular—and polarizing—force in the nation, Andrew Jackson, who, to make matters more difficult, favored a politics of personalism and Monroe's related nonpartisan idea. But Van Buren persisted. If the old party could be connected to Jackson, another party in opposition would be quick to follow. Van Buren's plan did not fully "take" in 1828—Jackson won on a personal appeal—but by 1832, with mounting opposition (and with Van Buren having insinuated himself into his good graces), Jackson concluded that he needed the Democratic Party. He became its nominal founder and great champion.

From early on Van Buren concluded that the caucus system was finished and that a new system of nomination was needed. This was the Age of Jackson in which people demanded a greater role in choosing their leaders. The new institution Van Buren proposed was the party convention, a meeting consisting of a large num-

ber of delegates chosen from the states. Not only was the convention more democratic than the caucus, it allowed a large number of politicians to meet face to face to work out the arrangements, including the choice of the nominee, that secured party harmony. As time went on, of course, the conventions also occasionally became the forums for revealing and intensifying factional differences.

Parties were self-created associations, not official public bodies. They determined their own procedures and rules. One of the most unusual and fateful innovations was the Democrats' two-thirds rule for nomination, adopted in 1832, which effectively gave a veto to any geographical section. The rule also produced some conventions of notorious duration; the longest, in 1924, selected the otherwise forgettable John W. Davis after 103 ballots. Party conventions, which operated at all levels of government, became the institution that performed the great "public" function of nomination. Yet they had the legal status of fully private entities in which, as the political scientist V.O. Key once colorfully noted, "it was no more illegal to commit fraud...[than] in the election of officers of a drinking club." Following sober reassessment, some states began the gradual process of bringing parties under the control of state legislation. But national parties and the national conventions operated beyond the jurisdiction of any state, and no one at the federal level at the time ever conceived that Congress had the authority to regulate them. A national function of the highest importance—nominating presidential candidates—was carried out by an institution that no political authority could regulate.

Popular Leadership

LIKE THE CONGRESSIONAL CAUCUS EARLIER, the party convention eventually came under fire. Once again, the criticism was only partly directed against its intrinsic flaws as a nominating mechanism; the larger objection was that the convention embodied the alleged defects of the parties of the day. American parties, in the eyes of their Progressive critics at the turn of the 20th century, were thoroughly corrupt, more interested in victory than principle, and willing as a result to settle for weak, pliable candidates. Nominations, it was charged, were settled either by emotional swings among convention delegates or by secret deals struck by party bosses and machine leaders in smoke-filled rooms (tobacco in those days).

As a remedy, the Progressives advocated going over the heads of the party organizations to the people. They prescribed two reforms: nomination by primary elections, in which a wholly new kind of party would form around the victo-

rious nominee, and independent personal candidacies of the sort represented by Ross Perot in 1992. The Progressives' oft-proclaimed faith in democracy, including direct democracy, was no doubt genuine, but it came wrapped within a concept of popular leadership. The heart and soul of their theory of governance was the idea of a special relation between the leader and the public. Popular leadership, located in the presidency, would modify the spirit of our antiquated constitutional system; overcoming the separation of powers and breathing new life into a moribund mechanical structure. As Woodrow Wilson put it, "The nation as a whole has chosen him, and is conscious that it has no other political spokesman.... Let him once win the admiration and confidence of the country, and no other single force can withstand him...."

To win this admiration and confidence, the leader had to be selected on his own merits, without the help or constraint of the traditional, decentralized party organization. All elements of popular leadership should be on display in the nomination process, to be judged by the public. The Progressives sought to reverse Van Buren's principle of placing the party above the leader. Though sincere in their wish to restore something of the founders' notion of statesmanship, they had in mind statesmanship of a different kind, recognized by different means. Progressives sought to raise the selection process to the status of a grand, exalted good, a centerpiece of republican government, celebrated for discovering the leader and educating the public—who would choose among the candidates on the basis of their positions on issues and their appeal as leaders, revealed especially through their rhetorical prowess. It is only natural, wrote Wilson, that "orators should be the leaders of a self-governing people." Hand in hand with oratory came the celebration of openness in all matters, "an utter publicity about everything that concerns government."

And what of the risks the new method entailed? In an enlightened age, with a vigilant press, the reformers were confident that dangerous appeals had little chance of succeeding: "Charlatans cannot long play statesmen successfully when the whole country is sitting as critic," declared Wilson.

By 1912, another important turning point in presidential selection, 14 states had adopted some kind of primary elections, often including various methods to instruct or bind the delegates. By accepting these delegates, even with qualifications, the parties effectively consented to an alteration of the nomination process. This system was immediately put to use on the Republican side by Teddy Roosevelt. Roosevelt forced a reluctant President William H. Taft out of the White House and into an active

campaign, most notably in the Ohio primary, where Taft immediately proceeded to label T.R. a "demagogue." Wilson, too, campaigned in some Democratic primaries. In the end, however, the primaries were not decisive in either contest. Taft bested T.R. at the convention, despite T.R.'s greater success in the primaries, and Wilson, with nowhere near the two-thirds needed for nomination, had to await his fate at the Democratic convention, where he was chosen by party leaders after four long days of contest and 46 ballots.

But the issue of a new nominating process was now squarely placed on the national agenda. In his acceptance speech at the Progressive convention, Roosevelt proclaimed "the right of the people to rule," going on to declare, "We should provide by national law for presidential primaries." Wilson took the same tack in his first State of the Union address, urging "the prompt enactment of legislation which will provide for primary elections throughout the country at which the voters of the several parties may choose their nominees for the Presidency without the intervention of nominating conventions." He also suggested bringing party functions under a federal legislative regime. Conventions would be held—after the nomination, he proposed—consisting not of elected delegates, but of the nominees for Congress, the national committee members and the presidential candidate, so that "platforms may be framed by those responsible to the people for carrying them into effect."

The Present System

TWO THINGS OCCURRED TO HALT THE enactment of an all-primary system. The first was opposition in Congress to national legislation, mainly on grounds that the federal government had no authority to regulate the selection of delegates to party conventions. The second was the rapid decline after the war of the Progressive movement as a whole. States lost interest in establishing new primary elections. Later on, liberal leaders in the Democratic Party, most notably Franklin D. Roosevelt, preferred to work with party bosses rather than pursue procedural reforms through state legislation. The national party on its own, however, at FDR's insistence, eliminated the two-thirds rule in 1936.

This loss of enthusiasm in the Progressive impulse resulted in the rise, in an organic fashion, of a new, "mixed" system of presidential selection. It consisted of an uneasy synthesis of the original party convention idea and the new theory of nomination by primaries. Candidates could pur-

sue a limited primary strategy to impress party leaders and claim the mantle of the people's choice, as John F. Kennedy did in 1960, but the ultimate authority to nominate still lay with the convention. Proof of this point occurred in 1968, when Hubert Humphrey won the Democratic nomination without entering any primaries.

But his selection also proved that the Progressive idea, under its new name of "Reform," had won the battle of legitimacy. Many Democrats regarded Humphrey's nomination as tainted. As a result, enough states adopted presidential primaries to make them the main component in the nomination of candidates. King Convention was dethroned. Since 1976, all nominees of both parties have been selected in advance of the party conventions by a choice of the people in primaries and open caucuses. This year, the possibility that the Democratic Convention might play a role in nominating its party's candidate was enough to provoke horror in the minds of most party leaders. The convention today serves a purely public relations function: to showcase the party nominee in a speech that is now the effective platform of the party.

The nation has been trying since 1972 to work out the new principle's logic. As long as the convention made the ultimate decision, when states held their primary or caucus was a relatively minor matter, because all state delegations might have their say at the convention. With the decision now made before the convention, states have been trying to preserve their influence by shifting their primaries nearer to the campaign's start, so that their citizens might vote before the race was over. Of course, some states might decide to hang back, betting that if there is a split they may be in a good spot later on to play a major role—like Wisconsin, North Carolina, and Oregon this year.

Fraught with Unknowns

BARACK OBAMA'S SELECTION AS THE Democratic nominee fulfills at least one hope—the Progressive longing to pick candidates who during the campaign exhibit all the arts of popular leadership and oratory. Granted, by the very nature of politics, those who have experience and connections will under almost any electoral process possess an advantage. Most of the nominees chosen under this system could just as easily have been chosen under the past two systems. But the present system has certainly opened the door to other possibilities. Candidates like George Wallace, Jesse Jackson, Pat Buchanan, Pat Robertson, and Howard

Dean, to name only a few, have competed, sometimes with promising results, as popular leaders. Many had thin records of public service and treated the presidency as largely an entry-level political position.

Any selection system that permits choice—unlike, for example, selection by seniority or primogeniture—by definition does not determine the outcome; it only influences it. This makes it impossible to attribute a particular result to the system's formal properties alone. But two nominees now seem to be clear "products" of the new system: Jimmy Carter and Barack Obama. Neither won on the basis of a substantial record of public service or high previous standing in his party. Their victories were due to their performance as popular leaders. Carter was a Jimmy one-note, repeating a mantra of promising never to tell a lie that resonated perfectly with the electorate's mood in 1976. Obama, more the maestro than fiddler, has composed his work using a more complex register, alternating motifs of change and hope.

Indeed, Obama's campaign has forged what for many Democrats is an almost spiritual bond between the leader and his followers. The strength and depth of this personal appeal became so apparent and so alarming to others that the candidate felt compelled to declare, "It's not about me"—this, in the extraordinary context of a party acceptance speech he delivered in a football stadium before more than 80,000 in attendance. Obama has also made a conspicuous point of rejecting the low "popular arts" in favor of a more high-minded rhetoric, which many critics nevertheless suspect to be a cleverer form of artful popular leadership.

Yet Obama is a candidate whom many Americans feel they hardly "know" or can confidently place. Despite or because of this, he has become for many the object of their dreams and the vessel of their hopes. His nomination affords the opportunity for the observer to gaze squarely into the heart of the new method of leadership selection. Choosing a president is always a process fraught with unknowns, and more so in this case than in almost any other. If Barack Obama is elected president, fondly can we hope, and fervently must we pray, that the country has avoided the greatest potential danger of its fractured electoral system.

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Book Review by Jean M. Yarbrough

PROGRESSIVE CONSERVATIVE?

Theodore Roosevelt: Preacher of Righteousness, by Joshua David Hawley.
Yale University Press, 318 pages, \$35



FOR TOO LONG, NOTES STANFORD HISTORIAN David M. Kennedy in his Foreword to *Theodore Roosevelt: Preacher of Righteousness*, biographers have played up the antics and colorful personality of our 26th president, while giving short shrift to his thought. T.R.'s best known biographer, Edmund Morris, seemed positively allergic to ideas and, on the few occasions in *Theodore Rex* when he ventured to explain them, got them hopelessly muddled (see my "Bully!" CRB, Winter 2002). Yet pundits and politicians continue to find in Roosevelt's ideas a source of political inspiration. *New York Times* columnist David Brooks has long championed Roosevelt as a model for Republicans, advising candidates to ask themselves if what they stand for would make Teddy proud. And in this electoral season, John McCain has once again cast himself as a "conservative" in the Theodore Roosevelt mold. Thus the publication of Joshua David Hawley's new biography, the first to focus primarily on Roosevelt's ideas, is both welcome and timely.

Like T.R., Hawley is a young man with large and laudable ambitions. Indeed, the parallels between the two are striking. Roosevelt began his first book, *The Naval War of 1812*, while a senior at Harvard, and continued working on it during his stint at the Columbia Law School. It was published to great critical acclaim on both sides of the Atlantic when he was 23. Hawley's study grew out of an undergraduate honors the-

sis at Stanford, which he completed in book form five years later while a student at the Yale Law School, and on the editorial board of the *Yale Law Journal* to boot! The dust jacket informs us that he has just finished a clerkship with Chief Justice John G. Roberts, Jr. It would seem that T.R. has found a worthy biographer.

In many respects, he has. The great virtue of *Theodore Roosevelt: Preacher of Righteousness* is how seriously it takes Roosevelt as a political thinker. "Roosevelt," Hawley writes, "thought more deeply...than most any of his contemporaries, including Woodrow Wilson" about "the fundamental questions of freedom," such as "the moral and intellectual requirements of democratic citizenship," how "the new industrial economy" could be reconciled with "republican equality and independence," and what was the proper role of a "free republic in the world." On all these issues, Roosevelt "saw farther than most any of his contemporaries, including Woodrow Wilson." Yet Hawley is not without his reservations. Though he admires Roosevelt for having had "the courage and the character to ask the questions," he grants that the answers Roosevelt offered "may not always have been wise or consistent."

Without ever saying so, Hawley demonstrates that Roosevelt's thought was very much a product of his times. At the age of 14, he had read Darwin's *Origin of Species* and absorbed its central teaching that species evolved through

natural selection, or survival of the fittest. Later, at Harvard, Roosevelt studied geology with Nathaniel Southgate Shaler, who introduced him to Lamarckianism, a competing theory that explained evolution by arguing that species adapt to their surroundings and pass these acquired characteristics along to their progeny. In his politics, Roosevelt straddled these two theories uneasily, using Darwin's survival of the fittest to explain and justify "Manifest Destiny" in his histories, but couching his policy prescriptions, most notably on immigration, in Lamarckian language. More than many in his social class, Roosevelt believed that the newly arrived could advance if they would assimilate to American ways and teach these to their children. At the same time, there was more than a trace of Darwinism when Roosevelt, the aspiring reformer observed that, in the struggle of life, a great many were bound to fail, and there was nothing the state should do about it.

THEORIES ABOUT THE POLITICAL SUPERIORITY of the Aryan or Teutonic "race" were also very much in vogue, and Roosevelt absorbed these as well. Hawley identifies Edward Augustus Freeman as one of the principal proponents of these views. Indeed, the Harvard catalogue for 1877 reveals that Freeman's was the assigned text for the sophomore year's required history course. No wonder then that Roosevelt's

own histories, trenchantly discussed by Hawley, hewed to the "germ theory" of liberty, according to which the capacity for liberty was nurtured in the German forests (and carried by the Anglo-Saxons to England), whence it was brought to America. While Roosevelt did not go so far as to argue that the Teutonic race possessed a unique capacity for self-government, he was convinced that the English-speaking race stood far in advance of the rest of the world. In fact, he used this argument (among others) to justify American expansionism, which was really imperialism by another name. Yet unlike his arguments in defense of Manifest Destiny, which were cast in harsh Darwinian tones, Roosevelt defended expansion in the Philippines as a benefit to the ruled.

As Hawley demonstrates, Roosevelt's devotion to the social gospel tempered the harsher implications of his social Darwinism and racial views, though it did nothing to moderate his conviction of his own rightness. If anything, transferring salvation to the here and now (as the social gospel did, effectively) only intensified his righteous fervor. As his title suggests, righteousness is the theme that ties together the diverse strands of Roosevelt's politics, culminating in the Progressive Convention in 1912, where the faithful, singing "Onward Christian Soldiers," heard Roosevelt conclude his acceptance speech: "We stand at Armageddon and we battle for the Lord."

Yet for a biography that focuses on ideas, Hawley's is strangely silent about the influence of German State theory on Roosevelt's turn to Progressivism. To be sure, he asserts that Roosevelt tended to conflate the people and the State in a way that was quite outside the American political tradition, but he does not investigate the origin of these foreign notions. At one point, discussing the thought of Herbert Croly, he notes similarities to Rousseau's general will; but he never mentions the more likely influence of German ideas on Roosevelt. As Eldon Eisenach has persuasively demonstrated in *The Lost Promise of Progressivism* (1994), many of the early Progressive reformers, including two whom Hawley singles out for discussion, Henry Carter Adams and Richard T. Ely, had studied in Germany. Adams spent two years at Heidelberg and Berlin, and later received the first Ph.D. awarded by Johns Hopkins, itself an outpost of German thought. Ely received his Ph.D. from Heidelberg.

Instead of discussing Progressivism's German accents, Hawley takes refuge in Adams's description of himself as an "economic mugwump," a term he sprinkles liberally throughout the book to explain Roosevelt's positions as well. But "mugwumpery" as a description of Roosevelt's thought is particularly unsatisfying. Not only did Roosevelt disdain the mugwumps (who, in 1884, bolted from the Republican Party, refusing

to support candidate James G. Blaine), but more important, his belief that the state should rise above crude material interests had deeper roots. Roosevelt, after all, had taken several courses in German at Harvard, and had been exposed to at least one form of German State theory when he studied with John Burgess at the Columbia Law School. Ultimately, T.R. would reject Burgess's *laissez-faire* politics, but there are surprising parallels in their conceptions of the state.

ALTHOUGH HAWLEY FAILS TO CAPTURE fully the complex sources of Roosevelt's thinking, he is very good at pointing out that Roosevelt's ideas cannot be reconciled with those of the American Founders. Whereas the founders believed that legitimate government rested on a social compact, Roosevelt saw government arising not as a result of deliberation and choice, but as part of a long evolutionary process, characterized by struggle and violence. And though both believed that republican government required a virtuous citizenry, Roosevelt tended to elevate the virile or manly virtues above everything else. Most important, the founders believed that government was established to protect individual natural rights; Roosevelt, as he became more progressive, tended to be suspicious of individualism and thought more in terms of duties than of rights. When on occasion he did mention rights, he tended to view them as historically contingent and capable of being adjusted to meet the demands of the moment. In place of natural rights, Roosevelt championed national greatness. So although T.R. frequently invoked the founders, his political principles were in important ways at odds with theirs.

It is on the question of what to make of these differences that Hawley most disappoints, first, because he insists on calling T.R. a conservative, and second, because he can't quite figure out what he himself thinks about Progressivism. Of course, the description of Roosevelt as conservative is hardly new. T.R. frequently spoke of himself that way, but he did so to try to appeal to those on his right. His enemies on the left, Robert LaFollette and the radical insurgents, picked up on this and ran with it because they considered his regulatory program too friendly to business interests. But why should they get to define the terms?

It is true, as Hawley points out, that Roosevelt sought to avoid class warfare and social disruption, and that he tried to bring his party around to accepting what he thought were inevitable changes. But, as the author recognizes, these were not changes designed to shore up the principles of the American Founders or to adapt them to new circumstances. As president, T.R. was convinced that the times required new principles, and that the only real choice was between

his "conservative radicalism" and a more violent, disruptive form. But no matter how many times he mentioned Edmund Burke, there was nothing even remotely "conservative" about the reconstruction of political life Roosevelt increasingly sought. By the end of his presidency, he was at war with his own party over his proposals to extend government regulation to the economy as a whole and to introduce a social welfare state. And in his effort to unseat Taft, Roosevelt went even further, championing a plebiscitary democracy with fewer constitutional checks.

Why Hawley seems so confused about what to make of T.R. and Progressivism is an interesting question, the answer to which is suggested in a comment by Hawley's mentor, David M. Kennedy, in one of the endnotes: "most American academic historians," Kennedy observes, "have thought of themselves as the political heirs of the Progressive tradition." Imagine how difficult it must be for a young history major (or, for that matter, law student) to raise doubts about the Progressive vision. Hawley confesses that there is much in Roosevelt's thought that is unsavory, in one place describing Roosevelt's vision as "statist and coercive, perhaps even socialistic." The book's frequent contrasts of Roosevelt with the founders suggest that Hawley is torn, but he cannot bring himself to retract his suggestion that there is something "conservative" about T.R. Still less can he affirm the wisdom of the founders. To do so would require him to argue that there are some truths that transcend their time. And this is precisely what historians, especially those who are heirs of the Progressive tradition, deny.

Hawley might have sorted out these intellectual muddles better if he had made a serious study of the founders and Lincoln for himself and expanded his reading to include political theorists who have written about America. Had he done so, he would have discovered that the "republican" paradigm he discusses (of virtue, equality, and disinterested devotion to the common good) is largely an academic confection, a way to discredit the founders' liberal republicanism. In a similar fashion, reading Washington, Hamilton, and *The Federalist* along with Lincoln, whose mantle T.R. claimed, might have provided a sturdier foundation for judging Roosevelt's politics. But this would have taken time. Lacking a coherent perspective, alas, this remarkable first book remains, as Hawley says of Theodore Roosevelt's early views, "genuine," but "undigested."

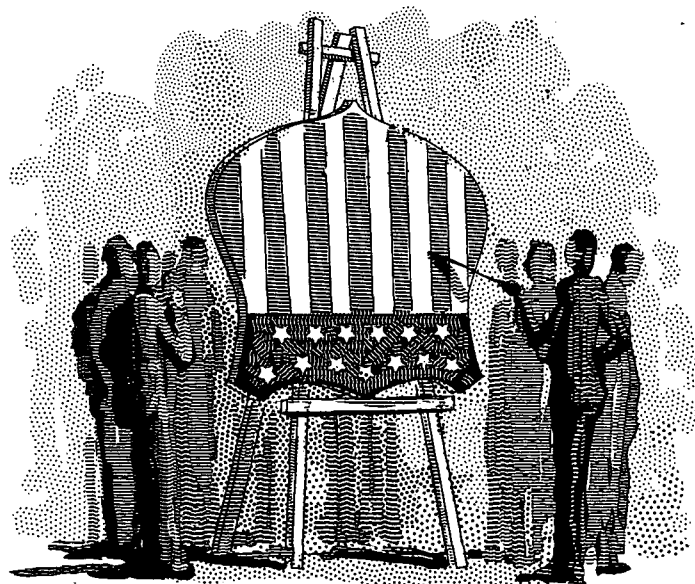
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Book Review by Douglas A. Jeffrey

CONFUSED ABOUT CONSERVATISM

White Protestant Nation: The Rise of the American Conservative Movement,
by Allan J. Lichtman. Atlantic Monthly Press, 608 pages, \$27.50

Conservatism in America: Making Sense of the American Right,
by Paul Edward Gottfried. Palgrave Macmillan, 208 pages, \$39.95



THE IDEA THAT AMERICAN CONSERVATIVES have won a “battle of ideas” over the last half century is a pipe dream. Yes, they were responsible for reviving and maintaining a strong stand against the Soviet Union after the post-war anti-Communist consensus disintegrated, especially in the 1960s and ’70s—no small feat. And today they play a similar role in opposing Islamic fascism. But as far as stemming the tide of the administrative state, it is not easy to point to a significant victory. Increasingly, in fact, there is a division within American conservatism—or what is called that—about whether the revival of limited government remains a defining goal.

Allan J. Lichtman’s *White Protestant Nation: The Rise of the American Conservative Movement* does note in passing that defeating the Soviet Union proved easier for conservatives than defeating big government, but then again it seems to note everything in passing. The book is a great sprawling thing, haphazardly interweaving—in an almost unreadable way—intellectual history (on which it is light), social history (on which it is heavy, especially in its first half), and political history (which dominates its later chapters). Aside from lacking focus, it displays no sense of proportion. To cite one of countless examples, in chapter 7, on the period 1969–1976, 13 lines

on the argument between William F. Buckley and the libertarians are closely juxtaposed with 12 lines on the constituent mail received by two Republican congressmen from Oklahoma (one letter, referring to Kent State, suggests that “[a] few more killings of students will no doubt help.”) Lichtman does not bother to distinguish movement conservatism from the Republican Party. Nor does he pause to reflect on the differences between the movement’s various components.

Whereas most historians trace the conservative movement in America to the late 1940s or early ’50s, Lichtman, who teaches at American University, believes it “assumed its distinctively modern form in the decade after World War I.” He doesn’t trouble himself to defend this departure from the conventional view, though clearly it is meant to suggest that conservatism has more to do with irrational, often ugly prejudices than with anything rational and moral. Thus in the book’s first chapter, dealing with the 1920s, Calvin Coolidge receives short shrift (and his critique of Progressivism no mention at all), whereas an entire section is entitled “Grassroots Conservatism: The Ku Klux Klan.” (Subsequently, Lichtman credits the John Birch Society with being “the most effective grassroots group on the right since the Klan of the

1920s.”) He asserts his basic thesis in the introduction: “for conservatives the driving forces of American history are Christianity and private enterprise....” The former is then narrowed to white Protestantism (in keeping with the book’s title), and to supplement private enterprise, anti-pluralism is identified as conservatism’s second “core value.”

LICHTMAN TRIES STUBBORNLY TO UPHOLD this thesis throughout the book, but without success. There are three main problems with it. The most glaring is his insistence that conservatism is essentially white and Protestant, even as he recounts the significant role that Catholics, Jews, and several important black thinkers have played in it. (In the book’s first chapter, he notes the anti-modernist influence of the Vatican in the 1920s and ’30s.) One supposes he could defend his stubbornness on this point by arguing that no matter the faith or race of conservatives, their two “core values” are those he identifies with white Protestantism. But he doesn’t, and in any case that would only lead to the other two problems.

The book uses the term anti-pluralism equivocally. Early on, it signifies racism and anti-Semitism; but in chapter 7, in the course of a weird discussion of the influence of Leo

Strauss—Strauss's political philosophy, Lichtman suggests, "explains how Jewish intellectuals could become high priests in a movement of Christian soldiers"—it signifies the rejection of moral and cultural relativism. These two understandings may seem equally backward to Lichtman, but they are clearly distinct—not to mention that the first is antithetical to America's principles of civil and religious liberty, while the second is essential to them. So when Lichtman later suggests that the Heritage Foundation was founded to be "more attentive to anti-pluralist values than the American Enterprise Institute," one doesn't know whether to boo or cheer.

As for private enterprise, Lichtman distinguishes it from *free* enterprise. Free markets and individual liberty, he says, are "dispensable ideas" that conservatives will always jettison in favor of their core values—e.g., *private* enterprise, which consists in unprincipled selfishness and is amenable to a bureaucratic government that doles out subsidies and passes regulations to benefit Big Business and hold down the poor. This evocation of the slightly musty idea of conservatives as Robber Barons allows Lichtman to predict the implosion of conservatism, on the basis that its two "driving forces"—Christianity and private enterprise—are incompatible. "[C]an conservatives serve both God and mammon?" he asks toward the end of his introduction. It also allows him to characterize George W. Bush—a proponent of big-government (a.k.a. compassionate) conservatism who has been consistently and severely criticized as such by mainstream movement conservatives—as standing "firmly within an American conservative tradition" that is driven by "the revolutionary objective of overturning the liberal order."

OTHER REVIEWERS OF *WHITE PROTESTANT NATION* have noted its historical inaccuracies: David Frum, for instance, criticizes Lichtman's branding of Warren Harding as a stand-out racist of his era, despite Harding being the first president to condemn lynching in a public speech, and that in Alabama. To compound the problem, Lichtman goes on to lionize Woodrow Wilson, a known racist: "Wilson was everything that Harding was not...learned and erudite...a brilliant writer, an inspiring orator, and a master of statecraft." These embarrassments do indeed pile up, but it is fairly clear from the beginning that Lichtman is not writing for other historians or in the interest of public enlightenment.

Two examples of the book's treatment of religion help us see what kind of audience Lichtman does suppose himself to be addressing. In a section on "Evangelical Protestantism," "fundamentalists" are said to hold "that Jesus, the son of God, was born of a virgin mother, lived a sin-

less life, and performed miracles. In this view," the account continues, "Jesus died to atone for our sins, was bodily resurrected, ascended to heaven, and will return to pass final judgment on the saved and the damned." Lichtman apparently aims for readers who find the Nicene Creed as beyond the pale as he does, and who would be shocked to know it is shared by Catholics and other non-fundamentalist Christians. And in a section attempting ingenuously to tie the 1920s eugenics movement to conservatism, the following caveat appears: "The Catholic church, despite its dedication to strong families and maternal roles for women, resisted negative eugenics." *Despite* its dedication to strong families and motherly women! It is no wonder that the book winds down with a tedious, undistinguished account of American history consisting of liberal boilerplate, even repeating known and shameful lies about the Valerie Plame affair.

White Protestant Nation begins and ends with the idea that George W. Bush won in Florida in 2000 because conservatives had more political passion than liberals. What but this concern could induce a respected historian to write such a long, time-consuming book about a subject in which he is so obviously uninterested? In chapter 3, on the period 1936–1945, the book mentions an idea—hatched following FDR's victory in 1936 by the defeated Alf Landon, his running mate Frank Knox, and Republican Senator Arthur Vandenberg—to form a "fusion party" that would bring together Democrats and Republicans who opposed the New Deal on constitutional grounds. Toward this end, Senator Vandenberg—justly famous for leading Republicans a decade later to join with President Truman in a bipartisan consensus on containing Communism—drafted a "Conservative Manifesto" with a Democratic colleague in 1937. Lichtman notes this, and that the Manifesto failed to attract support, but, characteristically, he tells us nothing about what it said.

PAUL GOTTFRIED'S *CONSERVATISM IN AMERICA: Making Sense of the American Right* also notes that conservatives have proved unable to put a dent in the administrative state, and Gottfried is sincerely disappointed. His is a far more interesting book than Lichtman's, although ultimately irrelevant to American conservatism and so often infused with blinding vitriol that what might have been a short and lucid exposition of the paleoconservative position is something less.

For Gottfried, a professor of humanities at Elizabethtown College, understanding true conservatism "requires a return to the era and society that gave birth to that concept." This would be Europe in the years following the French Revolution, when "conservative discourse...focused on

concreteness, particularity, vitalism, hierarchy, historicity, and collective consciousness." Citing the sociologist Karl Mannheim, Gottfried posits three essential characteristics of conservative thought. First, it opposes "bourgeois rationalism," i.e., any "moral perspective predicated on abstract universals." Thus for conservatives, "[t]he truth of a proposition" must "be uncovered by looking at the historical particularities and conditions that had shaped its content." Second, conservative thought requires an attachment to a certain social class or institution. Third, the "conservative mode of thought" does not "disappear with the vanishing of the order that it was meant to justify." Thus we have it available to guide us even in America, where such orders do not exist.

Gottfried admits that "American conservatism could not be anchored in anything as concrete as the social world in which European conservatives had lived and defended their orders and degrees" (he notes elsewhere, with somewhat amusing consternation, that "in America, people evidencing attitudes or behavior reminiscent of Europe's old landed aristocracy mark themselves for ridicule"). The closest thing to the Europeans he can point to on this side of the pond are Southern conservatives like Clyde Wilson and the late M.E. Bradford, who "have focused on their region's landowners, who were the presumed leaders of likeminded communities." These Southern intellectuals stress authentic conservative themes, "namely, localism, inherited authority, and a profound disdain for universal, rationalist thinking applied to politics"—although in doing so, Gottfried points out, they have "gingerly evaded the question of Negro slavery," which cannot be excluded from "a comprehensive, historically valid understanding." Apart from these Southerners, libertarian economist Murray Rothbard, and Burkean sociologist Robert Nisbet, the book reserves its kindest words for "cultural traditionalists," who "seek to preserve a literate Western civilization" but are largely apolitical, e.g., T.S. Eliot, who "shunned any association with *National Review*."

Russell Kirk, who saw himself in the tradition of T.S. Eliot while at the same time writing for *National Review*, is for Gottfried the transitional figure in "the invention of American conservatism" (he would place scare quotes around the last word, branding it as inauthentic). Referred to throughout the book as "values conservatism," this bogus American version employs a rationalistic way of thinking, based on "Anglo-American values," in opposition to the historically-minded European model. Kirk opened the door to its invention—although largely unwittingly, Gottfried allows—in *The Conservative Mind*, where he presented six can-

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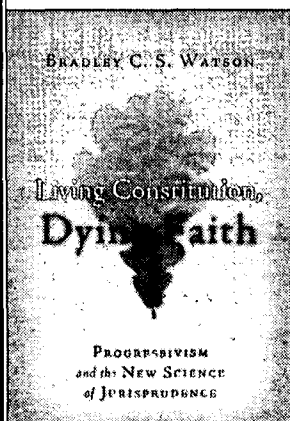
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ons that, if embraced, granted one conservative status. These canons were not rationalist principles, but rather "sentiments." Still, after the publication of Kirk's book, becoming conservative "was no longer a question of birth, or of social position, or of the worldview related to either." And once Kirk opened this door—once conservatism became a "democratic option" that "can be compared to American low church Protestantism"—"values conservatism" was doomed to drift leftward, since it was "not a response grounded in either a dominant class or one effectively competing for dominance."

THERE ARE MANY VILLAINS IN *CONSERVATISM IN AMERICA*—including, in the interest of full disclosure, the college where I work—but chief among them is Harry V. Jaffa, who, Gottfried writes, seized the opening created by Kirk's canons and "succeeded brilliantly" in providing a "successor value," leading to a "progression of value conservatisms" and culminating today in the tyranny (no gentler word is sufficient to express Gottfried's view) of the neoconservatives. Jaffa's "successor value" was the principle of equality as contained in the Declaration of Independence and as defended by Abraham Lincoln. The neoconservative "successor value" is the idea of global democracy, coupled with a positive fondness for big government. Even though many students of Jaffa have been critical of the Bush doctrine (not to mention their considerable scholarship directed against Progressivism, the New Deal, and the administrative state), Gottfried does not distinguish "Jaffaites" from neoconservatives. In fact, he seems to label anyone opposing the views of Ron Paul (his current beau ideal of the "strict constitutionalist Right") on military funding and the Iraq War as neoconservative—even Condoleezza Rice!

A subsidiary villain in the book is William F. Buckley, whom it blames—as supposed keeper of the conservative gate—for letting Jaffa in and giving Gottfried's friends the boot. Much of the related diatribe is over the top. For example, in the context of criticizing this journal—Gottfried also excoriates Buckley for accepting its editor into the conservative fold—he writes, "[t]hose who stand outside the chosen value framework of the value selector are uniformly condemned if not *dehumanized*" (italics added). But Gottfried's more serious criticism of Buckley concerns his decision, early in the days of *National Review*, to give precedence to the struggle against Communism over the fight to turn back the New Deal. This was a prudential judgment, open to objection then and now. But it doesn't mean, as Gottfried seems to suggest, that the secondary goal was discarded—nor would any fair reading of *National Review* through the

Buckley years suggest so. Similarly, it is a question today whether to support Ron Paul's non-interventionism in the face of the threat of Islamic fascism—as Gottfried does, which seems a form of imprudence close to lunacy. Surely, as free men still, we can stave off destruction while battling at the same time, as best we can, to revive limited government.

CONSERVATISM IN AMERICA OPENS WITH A "special acknowledgement" to the "dead German thinkers" whom Allan Bloom criticized in *The Closing of the American Mind* (1987), and from whom Gottfried has "happily drawn [his] insights." Thus Gottfried uses the term "values" in its proper Weberian sense—meaning an individual's opinions, by which all other opinions will be measured, and meaning, as well to suggest the impossibility of objective truth. He is appalled and angry that Jaffa and others paint historically-minded paleoconservatives (and even, in Bloom's case, those liberals who were outraged when Ronald Reagan called the Soviet Union "evil") "with the relativist brush." But to refute the charge of moral relativism, he falls back on the language of values. So instead of refuting Jaffa's and the founders' principle of equality—which comes down to the idea that it is always and everywhere wrong for one man to rule another man as if he were a pig or a cow—Gottfried retreats to the assertion that ascribing "universal validity to one's personal values is an even more ominous development in the 'conservative' value game than positing a relativist straw man."

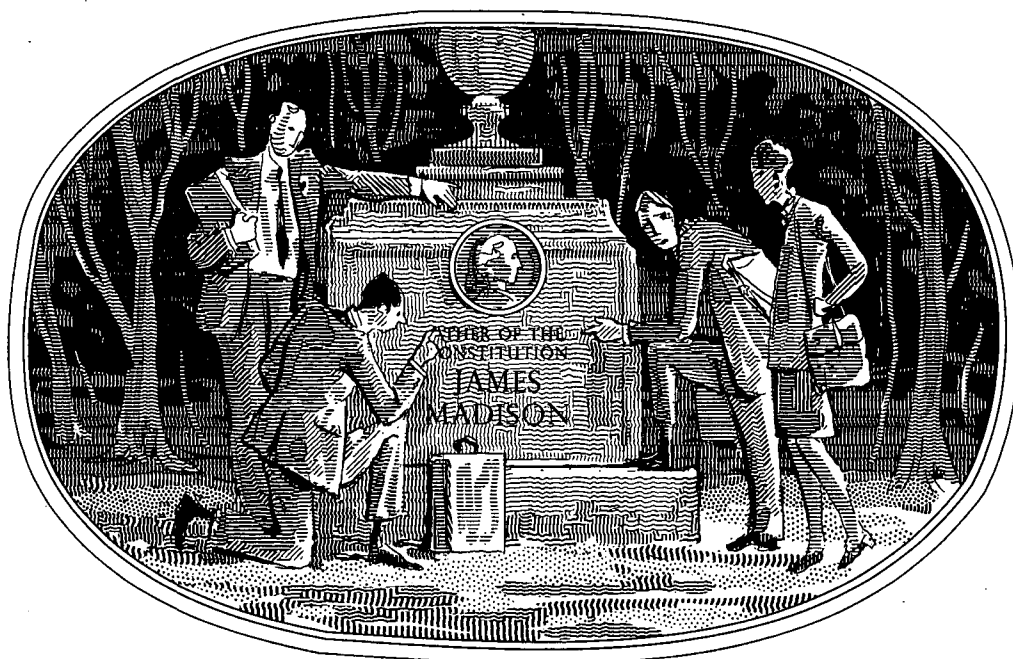
There is no way out of this argument. Nor is there a way to reconcile Gottfried's German historicism with the American republic—try as he might to read the Declaration's "Laws of Nature and of Nature's God" out of America's founding—or with the principles and way of life any genuine American conservatism must be charged with conserving. In one bewildering section of his first chapter, Gottfried announces that in order "to throw light on the American experience," he will trace (down to the present day) the failure of post-war Germany to forge a "politics based on values." But shouldn't Germans rather look to the American experience, which (until the Progressive era, at least) was not bogged down in German "values" talk? Germans have no foundation from which to launch an effective attack on the administrative state. Americans do, in their nation's founding principles. What sense does it make to prescribe German historicism and then, as proof of our need of it, point to the morass into which it has led Germany?

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Book Review by R. Shep Melnick

RAISING THE BAR

The Rise of the Conservative Legal Movement: The Battle for Control of the Law,
by Steven M. Teles. Princeton University Press, 358 pages, \$35



STEVEN TELES'S *THE RISE OF THE CONSERVATIVE Legal Movement* tells the engaging story of "how the conservative legal movement, outsmarted and undermanned in the 1970s, became the sophisticated and deeply organized network of today." Well written and well researched, the book examines two generations of conservative public interest law firms, the development of the Federalist Society, and the emergence of the informal network of legal scholars associated with "law and economics." Along the way it provides many useful side lessons. Activists on both the Left and the Right can learn about the tactics of intellectual insurgency and networking. Political scientists can benefit from Teles's explanation of how liberalism became entrenched in legal institutions just as conservatives were starting to dominate electoral politics. And grant-makers can learn the importance of adopting a long time-horizon when engaged in a battle of ideas.

While he presents the "battle for control of the law" as primarily an intellectual struggle, Teles, an associate professor of political science at Johns Hopkins, focuses not on the ideas themselves, but on the institutions developed to refine and promote them. As he explains, "ideas need networks through which they can be shared and nurtured, organizations to connect them to problems and to diffuse them to political actors, and patrons to provide resources for

these supporting conditions." One of the book's major strengths is that its author is sufficiently sympathetic to conservative ideas to treat them as serious, principled alternatives to contemporary liberalism, but detached enough to avoid becoming a cheerleader or presenting late 20th-century politics in Manichaean terms.

Teles wisely starts with a rich description of the "liberal legal network" conservatives rebelled against. Why did the Warren Court's liberal activism so quickly spread throughout the entire federal judiciary and then to state courts? Why were Republican presidents unsuccessful for so long in using judicial appointments to reverse this tide? The answer lies in changes in the legal institutions surrounding the courts. Most important was the transformation of law schools. This was the result of two generational shifts: first, New Dealers became the leading lights in major law schools; then, young scholars who came of age worshipping the Warren Court streamed into the legal academy. Teles notes that the number of full-time law professors grew by nearly 250% between 1962 and 1977. This meant that "hiring among law schools was especially intense at precisely the time that the law students who would fill those positions were moving decisively to the left." The more prestigious the school, the more marked the leftward movement. One consequence was the new emphasis on "clini-

cal education" that required students to engage in the nitty-gritty work of serving clients. The clients they served, of course, were not General Motors and Microsoft, which could afford more experienced help. Instead, clinical programs provided free manpower to legal aid offices, public defenders, and various public interest law firms on the left.

A similar change took place within the American Bar Association (ABA), albeit in a much shorter period of time. In the 1950s the leaders of the ABA still reflected their corporate clients' conservative posture. They attacked public funding of lawyers for the poor as another instance of creeping socialism. By the late 1960s the ABA had become a powerful advocate for Legal Services, defending it against attacks from Republicans. Teles also shows how foundations, especially the Ford Foundation, helped build a broad network of liberal public interest law firms. This is a familiar tale, but the author does a particularly good job showing how each of these developments reinforced the others: foundations defended their support for left-leaning groups by enlisting the help of bar leaders. The Ford Foundation funded clinical programs that both increased the number of activist law professors and provided manpower for public interest law firms. Thus brick by brick rose the fortress that conservatives soon tried to storm.

TELES DEVOTES TWO CHAPTERS TO CONSERVATIVE public-interest law firms: one to the failure of the business-orientated organizations created in the 1970s, and another to more successful second-generation groups, particularly the Institute for Justice (I.J.) and the Center for Individual Rights (CIR). The first generation—regional organizations such as the Pacific Legal Foundation and the Mountain States Legal Foundation—was a business-dominated response to the success of liberal public-interest law firms. They resisted specialization, focused primarily on writing amicus briefs in cases of interest to their business patrons, and remained distant from Beltway politics. In a perceptive and scathing memo widely circulated among conservative foundations, Michael Horowitz (soon to become legal counsel for the Office of Management and Budget in the Reagan Administration) charged that the tactics of these regional organizations gave credence to their opponents' claim that they were little more than shills for business interests. Horowitz argued that in order to "undermine the claim that liberals represented a trans-political public interest," conservatives must insulate themselves from the demands of business leaders—who are often more interested in getting goodies from government than in defending free markets—and above all, find ways to attract idealistic young lawyers. The key was to pursue cases that "would associate conservatives with the underdog, individuals unjustly treated by large institutions, while simultaneously associating the Left with malevolent, unresponsive concentrations of power."

These ideas were put into practice when Clint Bolick and William "Chip" Mellor, two disillusioned veterans of the first-generation firms, founded the Institute for Justice in 1991. I.J. made its name by challenging government regulation that restricted the ability of African-American hairdressers and taxicab drivers to pursue their professions. It hit the jackpot in *Kelo v. City of New London* (2005) on the Takings Clause, which it lost in the Supreme Court but won in the court of public opinion. For I.J., constructing strange coalitions became an art form. They persuaded the NAACP to write a brief supporting their position in *Kelo*. Afterwards, Bernie Sanders, the only socialist in Congress, attacked the Rehnquist Court for not being sufficiently vigilant in protecting private property. For I.J., presenting conservatives as defenders of the little guy was as important as winning court cases.

The other successful second-generation law firm, the Center for Individual Rights, did not adopt I.J.'s tactics for selecting sympathetic plaintiffs or using the media; but it did keep its distance from business, insist upon trying its own cases, and urge courts to extend legal protections to new groups rather than practice

judicial restraint. One of CIR's greatest victories came in *Rosenberger v. University of Virginia* (1995), in which the Supreme Court held that a public university cannot discriminate against religious organizations in the distribution of student funds. CIR invoked the First Amendment to fight political correctness on campus, and Justice Harlan's "colorblind" interpretation of the 14th Amendment to attack affirmative action. The first generation of conservative law firms attacked judicial activism; the second searched for ways to employ it.

No conservative legal organization has received more attention than the Federalist Society, which Teles describes as "the most vigorous, durable, and well-ordered organization to emerge from this rethinking of modern conservatism's political strategy." He shows that the Society became influential largely because it does so much less than most people think. It does not take positions on issues, nor does it endorse judicial candidates. It is an organization dedicated to debate and to networking. Its founders understood that endorsing policies and candidates would inevitably lead to factional strife. Their goal was to promote conservatism among law students and lawyers by demonstrating that conservatives could hold their own in debates with the liberals who dominate the legal academy; and to create a sense of camaraderie and efficacy among the lonely conservatives who found themselves deep within the belly of the liberal legal network. In prestigious law schools in the 1980s it took guts to join the Federalist Society. But over the long run membership had its rewards: in the Reagan years "Society membership was a valuable signal for an administration eager to hire true-believers for bureaucratic hand-to-hand combat." The number and prominence of members grew steadily over the next two decades, but the Federalist Society itself did not alter its modest organizational strategy. Although tempted to endorse Supreme Court nominees, it demurred. The wisdom of this decision became apparent when Society members divided bitterly over President George W. Bush's star-crossed nomination of Harriet Miers.

TELES ALSO TRACES THE GROWING INFLUENCE of "law and economics" within the legal academy. These chapters are filled with interesting details: the roles of Aaron Director and Richard Posner in establishing the law and economics program at the University of Chicago; the Olin Foundation's use of law and economics programs to create a counterweight to the Left's Critical Legal Studies; Henry Manne's success in developing the George Mason University Law School as a proving ground for law and economics professors. Teles concludes that "law and economics is the most suc-

cessful intellectual movement in the law of the past thirty years, having rapidly moved from insurgency to hegemony."

In these chapters Teles in effect shifts from organizational analysis to intellectual history. After all, the law and economics movement has little organization; its proponents are united only by a set of beliefs. In part, it flourished because it had interesting things to say about areas of the law stretching from torts to bankruptcy. Just as importantly, it offered a relatively simple model that could be used to churn out the law review articles essential for tenure. It is important to note that while many law and economics professors are conservatives, some are not. Conversely, some conservatives are highly skeptical of the school's radically individualistic worldview. In other words, the most successful component of the conservative legal "movement" was the one that was least reliably conservative.

This indicates how hard it is to examine the conservative movement's "support structure" without examining the substance of the movement's ideas. The closer one looks at the organizations and individuals Teles studies, the clearer it becomes that they are united more by antipathy to a common enemy than by shared beliefs. The first generation of conservative public-interest law firms defended judicial restraint, federalism, and the privileged position of business. The second encouraged judicial activism, warned of the dangers of "grassroots tyranny," and favored market competition over cozy collusion. The libertarianism so common among law and economics enthusiasts makes many social conservatives cringe. The Federalist Society understood that it could preserve its big tent only by avoiding stands on specific issues.

Steven Teles prudently describes his story as the rise of the conservative legal movement, not its triumph. In the conclusion he claims conservatives have "figured out how to erode the competitive advantage of legal liberalism," but "have not been able to...move beyond competition to actually displace the liberal legal network and construct a dominant regime of their own." The reader is left to ponder what all this interesting organizational and intellectual effort has accomplished. While the federal judiciary has become somewhat more conservative, state courts have picked up the mantle of Warren Court activism. If Barack Obama wins the November election, his appointments will undoubtedly reduce the influence of Federalist Society members on the federal bench. While conservatives can take pride in their organizational and intellectual achievements, liberals can take heart in the remarkable resilience of the liberal legal network.

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Essay by William Voegeli

REFORMING BIG GOVERNMENT



IN 2004 THE AMERICAN PROSPECT STAGED A website “debate” over whether President Clinton’s domestic policy had been sufficiently liberal. Ann Lewis insisted that Clinton’s presidency had been “good for our country,” an argument the former communications director in the Clinton White House could have made under sedation. Disputing her claim was Max Sawicky, an economist at the Economic Policy Institute, a liberal think tank. His central accusation was that Clinton had failed to “rehabilitate the reputation of the welfare state by proposing well-founded expansions. This, I submit, is the mission of the Democratic Party; otherwise, it has little purpose.” He went on to explain that there is “no mystery about how to fill” the “huge gaps in our social safety net.” You do it with social insurance.

If the expansion of the welfare state is the reason liberals get up and go to work in the morning, its contraction is the reason conservatives do. Almost any page from the writings of Ronald Reagan will demonstrate this point. To pick just one example, Reagan told the American Bar Association in 1983, “It’s time to bury the myth that bigger government brings more

opportunity and compassion.... In the name of fairness, let’s stop trying to plunder family budgets with higher taxes, and start controlling the real problem—Federal spending.”

This argument—over the proper size of America’s welfare state—has been going on for 75 years. Three things might prevent it from going on another 75, but two of them are unlikely. The first is that one side will score a decisive victory over the other, winning (so to speak) all the arguments and all the elections. The second is that the two sides will split the difference in a way they both feel reasonably happy about. The third, less far-fetched possibility, is that the debate will not be resolved but abandoned—after political and intellectual exhaustion motivates the combatants to redefine what they’re arguing about.

Growth of the Welfare State

BEFORE WE CAN SPECULATE ABOUT THE FUTURE of the welfare state controversy, we need to understand where we are now and how we got here. In his indictment, Sawicky pronounces the growth rate of the welfare

state during Clinton’s administration “pathetic.” He arrives at that conclusion, however, by using a dubious measurement: discretionary federal spending on everything except national defense. This category, used by the Office of Management and Budget (OMB) in its historical tables accompanying each year’s federal budget, includes government endeavors no one thinks of as components of the welfare state, such as programs for international affairs, science, space, and technology. At the same time, it excludes the social insurance programs Sawicky says are vital: Social Security, Medicare, Medicaid, and food stamps, among others.

A better yardstick can be fashioned to keep score of the Hundred Years’ War between the welfare state’s expanders and its reducers. One of OMB’s historical tables tracks annual federal outlays beginning in 1940, using enormous categories (“superfunctions”) composed of smaller but still vast “functions.” The two main superfunctions, National Defense and Human Resources, have together accounted for at least 61.7% of federal outlays in every year since 1940. The superfunctions that account for the rest of federal outlays are:

- Physical Resources (e.g., Energy, the Environment)
- Net Interest on the National Debt
- Other Functions (e.g., Science, International Affairs, Agriculture, General Government, and the Administration of Justice)

If we group those three final superfunctions as "Everything Else," we can see the changing makeup of the federal budget over the past 67 years in Chart A.

OMB's Human Resources superfunction is made up of the following six functions:

- Education, Training, Employment, and Social Services
- Health (excluding Medicare)
- Medicare
- Income Security (excluding Social Security)
- Social Security
- Veterans' Benefits and Services

Let's leave the final category off the list, since veterans' programs don't figure prominently in the arguments liberals and conservatives have conducted over the size and scope of government. What's left is an imperfect but useable approximation of the welfare state. (The chief imperfections are that we're looking only at federal expenditures, which leaves out state and local welfare state spending; and that the costs imposed by regulations, like the minimum wage laws, don't show up in the federal government's outlays.)

The OMB data comes with a "composite deflator," which allows us to remove the distorting effects of inflation by expressing every nominal dollar figure its tables capture in terms of a constant—the dollar's value during the fiscal year 2000. We can also adjust for population growth—there were 2.28 times as many Americans in 2007 as in 1940—by dividing the annual, inflation-adjusted outlays for Human Resources by the Census Bureau's annual population estimates. Doing so yields Table A.

This table reveals that the welfare state battle between liberals and conservatives has been as evenly matched as the one at Little Big Horn between Sitting Bull and Custer. Real, per capita federal spending on Human Resources was 15 times greater in 2007 than in 1940. Whatever else it may tell us, this 1,394% increase is one more demonstration of the power of compound

interest. You achieve that huge expansion over 67 years with an annual growth rate of 4.10%, which doesn't sound so formidable.

The 67 years in question have seen, of course, varying growth rates for per capita Human Resources outlays, not a constant one. On 11 occasions since 1940 these outlays declined from the previous year; on 14 others they increased by

that although presidents are inaugurated in the midst of a fiscal year, their budget proposals, and the decisions made by Congress about spending, taxing, and borrowing, are almost always directed to the ensuing rather than the current fiscal year. For example, President Carter took office in 1977, but the budgets he controlled were for 1978, 1979, 1980, and 1981. The 1977 budget had been determined by Congress and President Ford in 1976. This chart takes Human Resources outlays in FY 1977 as the baseline for measuring spending under Carter.)

The discovery that real, per capita Human Resources outlays expanded seven times as rapidly under President Eisenhower as under President Clinton is decidedly counterintuitive. We need to place that fact in context. The chart shows that the general trend has been for the growth rate of the American welfare state to decline. Conservatism's political advances account for some of this slowdown. But much of it is better explained by a generalization more often associated with the life sciences than the social sciences: immature entities grow more rapidly than mature ones. It's normal and healthy for a child's weight to double between the first and fourth birthdays, but also to increase by only a third between the tenth and thirteenth birthdays. (Additionally, real, per capita Human Resources outlays declined by 61% between 1940 and 1945; Dr. Win-the-War replaced Dr. New Deal, in FDR's phrase. It took nearly the entirety of Truman's term in office for those outlays to climb back to where they were before the war, making the 1940s a lost decade for liberals' ambitions to increase the welfare state.)

The welfare state's growth in the 15 years after World War II was driven by the maturation of the Social Security program, which issued its first benefit check in 1940 and grew (adjusting for inflation and the changing size of the national population) 27% a year between 1945 and 1953. Social Security outlays accounted for only 15% of Human Resources spending in 1945, but 37% in 1953. This trend continued under Eisenhower; Social Security outlays increased at an annual rate of 15%. By 1961, Social Security accounted for 52% of Human Resources outlays (leaving aside, as we have in all these calculations, outlays for veterans' programs).

Important components of the welfare state were added, one-by-one, as it matured. Con-

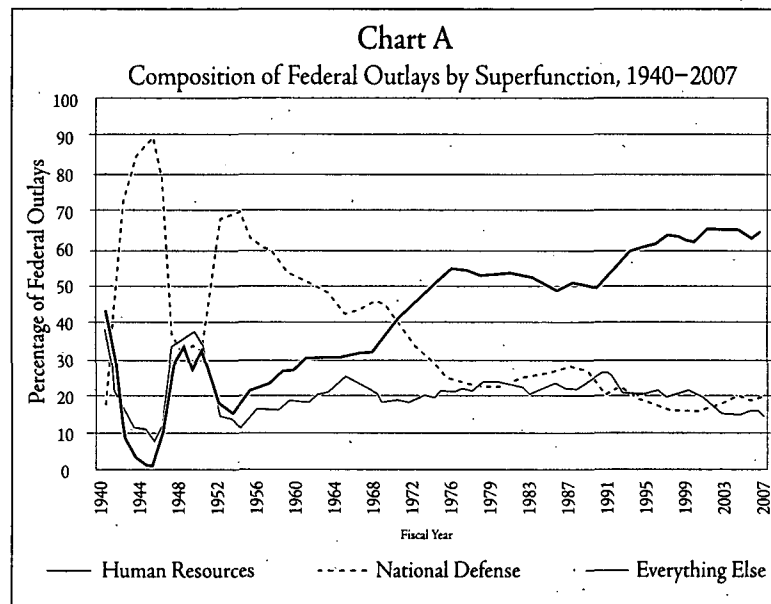


Table A
Per Capita Federal Spending on Human Resources (Excluding Veterans' Programs) in Constant Fiscal Year 2000 Dollars, 1940–2007

1940	\$ 310	1963	790	1986	2,729
1941	291	1964	812	1987	2,747
1942	223	1965	824	1988	2,801
1943	155	1966	962	1989	2,860
1944	140	1967	1,106	1990	3,002
1945	120	1968	1,240	1991	3,174
1946	200	1969	1,301	1992	3,403
1947	213	1970	1,376	1993	3,521
1948	183	1971	1,570	1994	3,590
1949	226	1972	1,709	1995	3,697
1950	275	1973	1,791	1996	3,724
1951	276	1974	1,864	1997	3,783
1952	318	1975	2,144	1998	3,822
1953	334	1976	2,333	1999	3,817
1954	368	1977	2,353	2000	3,787
1955	424	1978	2,393	2001	3,940
1956	433	1979	2,417	2002	4,221
1957	478	1980	2,557	2003	4,378
1958	574	1981	2,657	2004	4,416
1959	626	1982	2,643	2005	4,487
1960	656	1983	2,748	2006	4,543
1961	732	1984	2,629	2007	4,632
1962	773	1985	2,762		

more than 10 percent. Table B, on the following page, segments the growth of the welfare state into presidential terms and presidencies. (Note

gress made disability insurance part of Social Security in 1956. It created a number of new programs in 1965, including Medicare, Medicaid, the Elementary and Secondary Education Act, and the Higher Education Act. Because of such Great Society programs, real, per capita federal outlays for Education, Training, Employment, and Social Services grew at an annual rate of 31% between 1965 and 1969, three times as fast as they grew under Truman and five times as fast as under Eisenhower. Outlays for medical programs, other than Medicare, grew at an annual rate of 24% during those years, which was, once again, much faster than the rate before 1965.

Medicare is a separate, special category. Since dispensing its first dollar of benefits in 1966, Medicare has grown at an annual rate of 16.9%, after adjusting for inflation and national population growth. Measured in constant dollars, it accounted for 16% of all Human Resources spending between 1966 and 2007. The most significant growth in Human Resources spending is attributable to Medicare and "Health Care Services," an OMB category dominated by Medicaid. Still using constant dollars, these two categories combined to account for 8% of Human Resources outlays under Kennedy and Johnson, 15% under Nixon and Ford, 17% under Carter, 21% under Reagan, 26% under George H.W. Bush, 31% under Clinton, and 34% under George W. Bush. Measure all the Human Services outlays from 1962 (the first year of more detailed OMB historical tables) through 2007 in constant dollars, and it turns out that Medicaid, Medicare, and Social Security accounted for just under two-thirds of the total.

The Persistence of Poverty

THE LONG POLITICAL ADVANCE OF LIBERALISM has coincided with the refusal of any prominent liberal politician or writer to specify or even suggest the welfare state's ultimate and sufficient size. Instead, liberals have denounced our shockingly insufficient welfare state every year since the beginning of the Progressive era. When Max Sawicky did so in 2004, real, per capita expenditures on Human Resources were more than twice as large as they had been in 1975.

Yet it would be absurd to argue that the sort of economic insecurities the welfare state exists to alleviate were twice as severe in 2004 as in 1975, or that America had been little better than a Third World country during Gerald Ford's presidency. The percentage of Americans who owned their own homes increased between 1975 and 2004 from 64.4% to 69.1%. Average life expectancy became 5.2 years longer. In 1975 the proportion of Americans aged 25 or older whose educational attainments included the completion of at least four years of high school

welfare state that doubles its outlays in the 29 years separating a prosperous era from an even more prosperous era needs to grow dramatically faster.

Nor do liberals ask hard questions about how the persistence of shocking and shameful poverty relates to this inexorable growth of the welfare state. Americans were jarringly reintroduced to their economically vulnerable and socially isolated countrymen by Hurricane Katrina. Ask any hopeful Democrat leaving an Obama rally what we should do about such poverty, and you'll be told that the federal government ought to spend a lot more money to help these people. What you won't be told is that a welfare state that grows 4% a year for six decades and still hasn't eliminated the nation's worst poverty might have problems that more money can't solve. Specifically, you won't hear serious consideration of the possibility that the benefits already dispensed by the welfare state are not so much scandalously inadequate as scandalously misallocated.

Under the right economic circumstances liberals could afford to be blithe about devoting many of the welfare state's dollars to purposes that are less than urgent. The years of the welfare state's fastest growth were also, not coincidentally, the years of America's postwar economic boom. During the quarter-century after 1945, America competed from a position of unprecedented strength against nations whose industrial bases and civilian populations were decimated by the war. This uniquely favored economy threw off a reliable "fiscal dividend" that raised government's tax revenues in the absence of tax increases. World War II's frontline nations have long since reindustrialized, however, and been joined by growing numbers of newly industrialized countries. America may

well experience strong economic growth in the future, but is unlikely ever again to enjoy the latitude to hand out generous social benefits without looking at the price tags.

Under the right political circumstances, liberals could ignore these economic realities, pretend we're still living in John Kenneth Galbraith's "Affluent Society," and party like it's 1959. The Reagan legacy, however, is certain to thwart them. The liberal historian Sean Wilentz has recently argued that "never, in our lifetimes," are we going to see top marginal income tax rates of 70% again, something that "if

Table B

Presidential Term; Presidency (bold)	Years of Term	Length of Term	Total Increase in Real, Per Capita Human Resource Outlays	Annual Growth Rate of Real, Per Capita Human Resource Outlays
FDR III	1941-45	4	-58.69%	-19.83%
FDR IV/Truman	1945-49	4	88.44%	17.16%
Truman	1949-53	4	47.57%	10.22%
FDR IV/Truman	1945-53	8	178.10%	13.64%
Eisenhower I	1953-57	4	43.09%	9.37%
Eisenhower II	1957-61	4	53.18%	11.25%
Eisenhower	1953-61	8	119.19%	10.31%
Kennedy/Johnson	1961-65	4	12.55%	3.00%
Johnson	1965-69	4	57.87%	12.09%
Kennedy/Johnson	1961-69	8	77.69%	7.45%
Nixon I	1969-73	4	37.71%	8.33%
Nixon II/ Ford	1973-77	4	31.38%	7.06%
Nixon / Ford	1969-77	8	80.93%	7.69%
Carter	1977-81	4	12.90%	3.08%
Reagan I	1981-85	4	3.96%	0.98%
Reagan II	1985-89	4	3.56%	0.88%
Reagan	1981-89	8	7.66%	0.93%
George H. W. Bush	1989-93	4	23.11%	5.34%
Clinton I	1993-97	4	7.44%	1.81%
Clinton II	1997-2001	4	4.15%	1.02%
Clinton	1993-01	8	11.89%	1.41%
George W. Bush I	2001-05	4	13.88%	3.30%
George W. Bush II	2005-07	2	3.25%	1.61%
George W. Bush	2001-07	6	17.58%	2.74%

was 62.5%, and 13.9% had completed at least four years of college. By 2004 the percentages were 85.2% and 27.7%, respectively.

Numerous consumption items that had been luxuries or Research-and-Development daydreams in 1975 were parts of the furniture of American life in 2004, even for millions of Americans with incomes below the median: e.g., color televisions receiving dozens of channels by cable or satellite, home computers accessing the internet, air conditioning in homes and cars, cell phones and microwave ovens. None of these developments give pause to liberals who say that a

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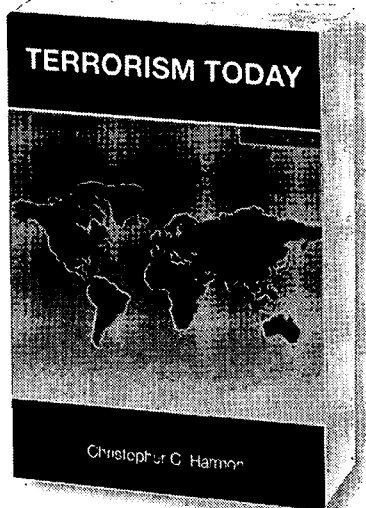
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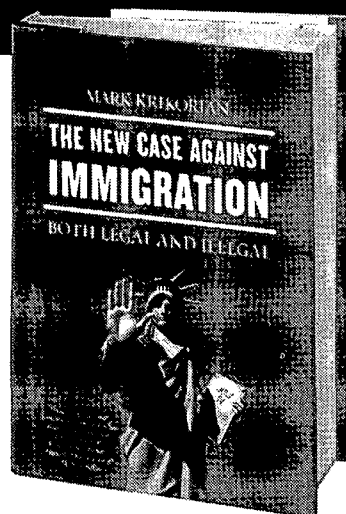


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Hunting for Votes and Revenues

THE LIBERALS' PROBLEM IS TWO-FOLD. First, they don't have the political latitude to soak the rich. Second, they've taken the position that hardly anyone is rich. In a debate before the Pennsylvania primary Hillary Clinton said, "I am absolutely committed to not raising a single tax on middle-class Americans, people making less than \$250,000 a year." Barack Obama's reply at the time was less categorical, but on the eve of the Democratic convention his top two economic advisors signaled, in a *Wall Street Journal* op-ed, that the Democratic nominee had embraced the Clinton position with one small modification: the Obama tax plan "would not raise any taxes on couples making less than \$250,000 a year, nor on any single person with income under \$200,000—not income taxes, capital gains taxes, dividend or payroll taxes."

The difficulty, as the *American Prospect's* Ezra Klein put it delicately, is that "when everyone below the 95th percentile is untouchable, and effectively middle class, you're in a bit of an odd discourse, distribution-wise." Strictly speaking, Clinton and Obama have made everyone below the 98th percentile untouchable, since only 1.92% of American households had an income of \$250,000 or more in 2007. (The portion of all households with an income of \$200,000 or more is 3.64%.)

There is no evident escape from this odd discourse. Democrats need to hunt where the ducks are. The dilemma is that they're hunting both for votes and for tax revenues. Their electoral strategies require votes (and campaign contributions) from the 30.1% of households with an income between \$75,000 and \$250,000. (Given the positive correlation between household income and voting turnout, these families make up significantly more than 30.1% of the electorate.) Democrats' welfare state aspirations, however, cannot be realized merely by making the rich less rich. Since even a 70% tax bracket won't do much good if it applies only to one-fiftieth of the population, the revenue yield from a much lower, politically feasible top bracket is going to be underwhelming. The math is unyielding: enacting any significant portion of the liberal agenda will also require making the merely comfortable noticeably less comfortable—and Democrats are terrified that advocating or enacting tax increases on upper middle-class voters will doom them when those voters go to the polls.

Even explicit pledges to soak the rich, and only the rich, do not guarantee electoral success with voters who aren't. In 2006, for example, the film director Rob Reiner promoted

a ballot proposition in California to guarantee that every 4-year-old in the state would attend preschool. It called for dedicating to the preschool program the projected \$2.4 billion per year from a new top bracket for the state income tax—11% as opposed to the existing top rate of 9.3%—affecting couples making more than \$800,000 per year and individuals making more than \$400,000.

Reiner was optimistic in advance of the vote. The "American public has no problem raising taxes if it's for something good," he told the columnist E.J. Dionne, who expressed the hope that "California, which started the tax revolt in the late 1970s, could inaugurate a new era of public investment in things that matter." After the ballot proposition lost by a 61–39 margin, Dionne admitted that "there remains a deep skepticism about government spending, even for the best purposes.... Attacks on tax and spend sound old and tired, but they still have force."

The Problem of Entitlements

THE WELFARE STATE GREW LESS DURING the eight years of the Reagan Administration than during a typical year in the glory days of the Great Society from 1965 to 1973. In the context of conservatism's long losing streak, this is an exceptional achievement. And yet...while the 0.93% annual growth rate of real, per capita Human Resources outlays from 1981 to 1989 is a small number, it's also a positive number. If this is the best conservatives can do, then the question is not whether liberals or conservatives will win the battle over the welfare state, but whether liberals will win sooner or later.

The central problem, both in terms of mathematics and politics, is entitlements. The Reagan Administration made good on its promise to curb the size of the federal establishment—in those areas where it was politically feasible to do so. Between 1981 and 1989 real, per capita federal outlays on Education, Training, Employment, and Social Services programs shrank at an annual rate of 4%. Income Security outlays declined 0.9% per year. But these two functions, together, accounted for only 34% of the constant-dollar spending on Human Resources during the Reagan years. By contrast, Social Security, Medicare, and Health Care Services, together, accounted for 64.4% of Human Resources outlays, and grew at an annual rate of 2.4%—not dramatic but, under the circumstances, relentless.

Reagan's first OMB director, David Stockman, wrote in his memoirs that the Reagan tax cuts could "add up only if deep dents were kicked in the side of the welfare state," and some of those kicks had to be directed at entitlements. "No single issue was as critical to the success of

the Reagan Revolution as Social Security reform." The Reagan Administration did lean against Social Security, and the results were not negligible. Modest and gradual increases in the retirement age were enacted in 1983. That year Congress also subjected, for the first time, a portion of Social Security benefits to the income tax, which doesn't show up on Social Security's books as a benefit reduction but amounts to backdoor means testing.

All the Reagan Administration's more aggressive efforts at entitlement reform, however, were soundly defeated and quickly abandoned. In May 1981 the White House floated Stockman's reform plan, which included steep reductions in the pension benefits paid to retirees who begin collecting at age 62, a sizeable majority of Social Security recipients. The Republican-controlled Senate quickly passed, unanimously, a resolution denouncing the plan, and Reagan spoke of it in a televised speech in September as though some other president's administration had come up with this hare-brained scheme.

The Gingrich Republicans who swept to congressional majorities in 1994 deserve much of the credit for the "pathetic" record Max Sawicky scorned: Human Resources outlays grew more slowly under Clinton than any president except Reagan. Those conservatives, however, were also thwarted by politically impregnable entitlements. Clinton repeatedly "used Medicare's popularity against Republicans," according to Major Garrett's book on the Contract with America, *The Enduring Revolution* (2005). Republicans insisted that their plan would have cut the rate of Medicare's growth, not actually reduce the program itself, going so far as include in their 1996 platform the raw statement that "Bill Clinton lied about the condition of Medicare and lied about our attempts to save it." None of these efforts did them or their plans for Medicare any good. By the end of Clinton's presidency the Republicans were "demoralized, frustrated, and listless," according to Garrett. "They wanted to change Medicare but they didn't know how."

Both of these futile assaults against entitlement programs had antecedents. Neither in 1980 nor 1994 did Republicans seek or secure a mandate to kick deep dents in the side of the welfare state. In his acceptance speech at the 1980 Detroit convention Ronald Reagan promised a federal hiring freeze and a thorough review of every federal program to eliminate waste and inefficiency. He promised to turn over to the states and localities every federal program that they could run more effectively, along with the funding sources to pay for each program. But that was about it, and that was all pretty general.

The 1994 Contract with America was equally reticent on the subject of shrinking government. Of its ten provisions, the only one that ex-

plicitly sought a smaller welfare state called for a "personal responsibility act" to reduce welfare eligibility and benefits, a promise the Republican Congress fulfilled in 1996. Another provision called for a constitutional amendment to require a balanced budget, and for a line-item veto, a measure likely necessitating a constitutional amendment as well. The purpose of these mechanisms, according to the Contract, was to "restore fiscal responsibility," but both were procedural changes that did not commit the Republicans to any specific spending cuts or ask the voters to endorse any. The other eight provisions addressed disparate issues, including crime, national defense, term limits, and the internal management of Congress.

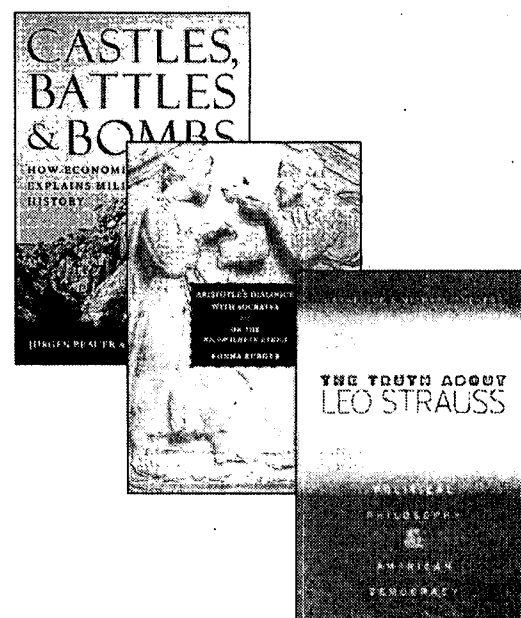
Not by happenstance did Republicans campaign against the welfare state at a high level of generality, avoiding specific pledges to scale back popular entitlement programs. The professionals who ran the 1980 and 1994 campaigns understood that their candidates could not drag such anvils behind them and still win the race. Nor was it by accident that Republicans, having secured power on such strategically fashioned platforms, found it impossible to launch successful post-election campaigns for reducing entitlements by uttering sentences that began with the words, "Oh, by the way."

As we've noted, however, liberals are in a box, too, since Democrats dread the thought of launching a post-election campaign for upper middle-class tax increases with the words, "Oh, by the way." The result is a paradox. The contest between liberals who want to expand the welfare state and conservatives who want to shrink it would seem to be a classic zero-sum game, a tug-of-war in which one side gains precisely to the extent the other loses. Yet both speak as if it's obvious that the other is running, and ruining, the country. Either could be wrong, but both can't be right.

Era of Bad Feelings

ONE EXPLANATION FOR THIS PARADOX IS that each side's activists and theoreticians are playing a long game, looking past the stubborn political realities that elected officials are not at liberty to disregard. Conservative activists and theoreticians will not relinquish the hope that the policy consequences of the 1936 election might yet be reversed, and the New Deal undone. They are as angry at conservative politicians, whom they consider too unprincipled and maladroit to advance this goal, as they are at liberals. Liberal activists and theoreticians will not relinquish the hope that the policy consequences of the 1984 election might yet be reversed, and the Glorious March Forward resumed as though the Reagan detour had

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never happened. They are, by the same token, contemptuous of liberal office-holders who accommodate the Reagan legacy rather than work day and night to exorcise it.

In both cases, the activists and theoreticians, many of whom are tenured, make the willingness to run suicide missions the sole criterion for judging the courage of politicians, who are never more than an election cycle away from having no votes to cast and no policies to shape. Those who don't survive the electoral short game never get to play the policy long game, of course. No conservative, either in the trenches or the commentariat, has yet devised a strategy for politicians to kick deep dents in the side of the middle-class entitlement programs without forfeiting a presidency or a congressional majority. Similarly, liberal writers and activists are much better at coming up with ways for liberal politicians to spend additional public funds than with ways for them to raise the taxes needed to acquire those funds without losing office.

This stalemate, where conservatives can stymie liberals' ambitions and liberals can stymie conservatives', is one of the reasons prosperity and peaceful victory in the Cold War have bequeathed our long Era of Bad Feelings. The stalemate is not tenable, although the bad feelings are likely to persist. The oldest baby boomers, born in 1946, are turning 62 in 2008, and beginning to collect early Social Security pension benefits. In 2011 they'll be eligible for Medicare and full pension benefits, if they chose to defer their retirement. American birth rates didn't peak until 1957, so the ranks of beneficiaries will grow for many years. The Census Bureau projects that 40.2 million Americans will be 65 or older in 2010, representing 13% of the entire population. By 2025 there will be half-again as many people 65 or older, 63.5 million, amounting to 18.2% of the population.

The baby boomers' retirement will be the best documented, least surprising policy challenge in American history—and still we are not prepared for it. Herb Stein's Law remains operative, however: if something can't go on forever, it won't. Entitlements can't go on, indefinitely, laying claim to a bigger portion of the federal budget and the GDP. Once the furniture is engulfed in flames we will finally start shopping for fire extinguishers.

Hard Choices

IF CONSERVATISM'S BATTING AVERAGE AGAINST the welfare state is predictive, the fire drill will involve benefit reductions and tax increases...but mostly tax increases. This result sounds like liberals' next victory in their zero-sum game with conservatives. Human Resources outlays will increase, and the welfare state

will lay claim to a bigger slice of GDP. Whether liberals will and should feel good about this victory is a separate question, however. If a "new era of public investment in things that matter" will at last vindicate and resume the New Deal/Great Society agenda, liberals are going to have to sort out whether all the things that matter matter with equal urgency. If so—if Human Resources expenditures are indistinguishable, interchangeable units—then the federal government's additional pension and medical benefits payments to retired baby boomers, many of whom are otherwise prosperous, will be an entirely satisfactory result for liberals.

And if not, then not. The journalist Matt Miller has tried, with little success, to get liberals to fashion policy on the basis of rigor rather than sentiment and wishful thinking. He notes that Medicare and Medicaid are scheduled to absorb 9% of GDP by 2030, twice the amount they do now. "Then there's the plethora of other Democratic priorities, from covering the uninsured, to wage and child-care subsidies for the working poor, to R&D and infrastructure backlogs." All the leading Democrats want to repeal the Bush tax cuts, as they apply to households making more than \$250,000 per year. The trouble, according to Miller, is that you can repeal them only once.

Coming up with six new ways for the government to spend each additional dollar of revenue may be good politics but cannot be good governance. However, asking liberals to acknowledge that there can be only 100% of anything, including GDP at the disposal of the welfare state, and thus requiring them to think hard about domestic policy trade-offs, is like trying to row a canoe up a waterfall. The political (and financial) capital liberals consume with tax increases that shore up our existing entitlement programs is capital they can't consume again with the additional tax increases needed to expand child-care, develop green technology, protect workers from the consequences of globalization, etc. How do we render entitlements solvent, and pay for liberals' numerous initiatives for those who aren't elderly, and do all this without resorting to the kind of tax increases that imperil Democrats and the economy? Miller posed that question to one Clinton Administration veteran, who said, "I don't think that conversation has yet taken place in the heads of most Democratic economists."

It would be a good conversation to have, not just for Democratic economists, but for the whole country. Each of our two ideological adversaries has a firm grip on one end of the domestic policy wishbone. Liberals speak to and for the public's aversion to a smaller welfare state. Conservatives speak to and for the public's aversion to higher taxes. It's not possible for them to

go on pulling in opposite directions indefinitely without guaranteeing bad luck for everyone.

Neither side, however, wants to relinquish its hold on that part of public opinion that is the source of its own political strength. Both hope that the tension inherent in the public's desire for a welfare state that confers generous benefits while imposing modest taxes will ultimately be resolved in its own favor. Three years ago the *New Republic's* Jonathan Cohn argued for the obvious liberal resolution: We "could actually raise taxes," he said, since "there's a compelling case for the government spending a great deal more money than it does now." Like Rob Reiner and E.J. Dionne, Cohn was optimistic that the public might be receptive to this compelling case. The "early signs suggest that Americans might be more hospitable to tax increases than everybody has long assumed," he wrote.

He sounds less hopeful today, despite the Democrats' victories in the 2006 elections and favorable prospects in 2008. Even if Senator Obama wins the presidency, Cohn says, it's not clear "that he can restore public faith in liberal ideals." Such a restoration would take us back, politically, to the middle-third of the last century, when the New Deal's popularity sustained liberalism and most Americans "believed the government was capable of doing the right thing." After "the backlash against Democratic policies on race, taxes, and national security" that began in the 1960s, however, America "returned to its natural predisposition: an instinctive skepticism of the public sector."

Cohn describes conservatives' efforts to exploit this skepticism in apocalyptic terms. They have "declared war on the welfare state," he wrote last year, so liberals "should probably defend said welfare state's existence before harping on its modest, if still regrettable, flaws." Conservatives did declare war on the welfare state in 1936 and 1964, but in the 26 fiscal years since Reagan's inauguration in 1981 the federal government's real, per capita Human Resources outlays grew by 74%. Whatever declaration of war Cohn is referring to, it would be very hard to find evidence that modern conservatives have waged war on the welfare state.

Supply-side economics was supposed to be a way for conservatives to avoid a fight they didn't think they could win. Shortly after Reagan's inauguration in 1981 *National Review* editorialized in favor of the "political genius" of the Kemp-Roth tax cuts, calling them a no-lose proposition for conservatism. Enact the cuts, *NR* said, and then

either, or a mixture, of two things happens: a) an economy stimulated by the tax cuts pours revenue into the federal coffers, making subsequent budget cuts milder

and politically more palatable; or b) that doesn't happen, and sudden inflationary pressures make deep cuts to reduce the deficit much more feasible politically.

Whether, or to what extent, the economic proposition that supply-side tax cuts would pour revenues into federal coffers was vindicated remains a debated proposition. It would be much harder to argue, however, that the political part of NR's prediction has held up well. The most favorable case one could make for it is that the welfare state grew more slowly than it would have in the absence of the tax cuts. The problem is not so much that this claim, whether or not plausible, is unprovable. It's that conservatives who expected that tax cuts would determine whether the welfare state's *reduction* would be large or small aren't going to derive much solace from a debate about the extent to which tax cuts determined whether the welfare state's *expansion* was fast or slow.

Supply-side tax cuts did little to necessitate or even facilitate reducing the welfare state, and there is no reason to believe an explicit campaign for that goal will succeed where Barry Goldwater's failed. Given all that, conservatives need to weigh the costs and benefits of putting liberals' minds at ease by explicitly renouncing the war against the welfare state, the one that's barely being waged and steadily being lost. They could do so by making clear that America will and should have a welfare state, and that the withering away of the welfare state is not the goal of the conservative project, not even in the distant future. What libertarians will regard as a capitulation to statism is better understood as conceding ground conservatives have been losing for 75 years and have no imaginable prospect of regaining.

The political advantage of this concession is that it leaves conservatives positioned to argue for a better, smarter, and fairer welfare state. "Liberalism needs government," says Cohn, "because government is how the people, acting together, provide for the safety and well-being of their most vulnerable members." Very well, but in a society that is remarkably prosperous by global and historical standards, shouldn't "most vulnerable members" be construed as referring to the most vulnerable 5, 10, or 25% of the population—not just the abjectly miserable, let us concede, but people confronting serious threats or problems? Yet when it turns out, time and again, that the effective meaning of liberal welfare and social insurance programs is to elicit compassion and government subventions for the most "vulnerable" 75, 80, or 95% of the population, it's hard not to feel scammed.

Good Government

IF THEY WERE TO ACCEPT CONSERVATIVES' stipulation that the welfare state war is over, liberals could turn their attention from defending its existence to examining its flaws, which are definitely regrettable but not necessarily modest. The distribution of the welfare state's benefits leads the list of those flaws. Like Cohn, Paul Starr of Princeton University and the *American Prospect*, says the welfare state is about the poor. Its "objective should be, above all, to eliminate poverty and maintain a minimum floor of decency to enable individuals to carry out their own life plans." But giving benefits to everyone, not just the most vulnerable, serves social and political purposes. Socially, "the long-term tasks of nation-building and of fostering a common culture and a sense of shared citizenship also strongly argue for public and universal schooling, old-age pensions, and other services that serve an integrative as well as egalitarian purpose," according to Starr. Politically, the imperative to construct democratic majorities that support programs for the poor "will often mean support for programs that provide universal benefits." We may say that such programs "target" the most vulnerable 100% of the population.

Neither argument excuses liberals' refusal to concentrate the welfare state's benefits on the most vulnerable, whose plight is ostensibly liberalism's animating concern. There is much to be said for public education; some of it is said by Democrats—such as the Clintons, Obamas, and Bidens—who enroll their children in private schools with no apprehensions that they will be warped into selfish Republicans by the time they graduate. The social cohesion promoted by paying taxes to and receiving benefit checks from the same government agency as millions of other strangers is spurious, however—an example of the "granfalloon," Kurt Vonnegut's term for "a proud and meaningless association of human beings."

Equally spurious is the supposed necessity of universalizing social insurance in order to secure majority support for programs that only a minority really needs. Were it otherwise, the Earned Income Tax Credit (EITC), for which all families with an income above \$41,646 are ineligible, would be as politically besieged as Aid to Families with Dependent Children was before 1996. In reality, EITC enjoys bipartisan support in Congress and is politically unassailable. "If means testing makes Social Security as unpopular as the EITC," writes Mickey Kaus, "Democrats have nothing to fear."

Liberals, in short, should take Yes for an answer. 75 years of their rhetoric about defending the most vulnerable among us really has persuaded the American people, who are fully prepared to support, on the merits, government programs to help the needy. For everyone else—the vast majority who are not needy—public programs are not the best or only expression of the public interest in economic security. Government should give them incentives to enhance their own economic security, without paying the freight charges to send their money round-trip to Washington.

There is a framework, then, for liberals and conservatives to argue about Good Government rather than Big Government. Start by rejecting all magic beans theories of public finance, acknowledging that the welfare state's expenditures and revenues cannot be massively, permanently out of balance. Both sides could accept the corresponding idea that the welfare state, like any utility-maximizing enterprise, has finite resources at its disposal. A well-designed and well-run welfare state will direct them to where they can do the most good and assist those people who need help most urgently. The corollary principle is that the welfare state should stop using its resources in ways that are not the best and highest, and reduce, reshape, or eliminate programs to help people who don't need it.

This framework leaves liberals and conservatives ample room to disagree about what it means for the welfare state to have sufficient resources, and to put them to their best use. What it does not allow them to pursue are plans to make America either a Scandinavian social democracy or a night-watchman state. Never, in our lifetimes, will America's welfare state become either a multiple or a fraction of what it is now. Such romantic visions of political transformation are not what the exigencies of domestic policy-making call for. In 1986, when the baby boomers' retirement was still merely a cloud on the horizon, James Q. Wilson wrote that

we are in a painful period, when what people want from government vastly exceeds what they are willing to pay for. Politicians encouraged people to take this view and now must find a way to persuade them to take a different view.... It will be a life's work for some dedicated, patient, and determined people willing to stay the course.

William Voegeli is a visiting scholar at Claremont McKenna College's Henry Salvatori Center for the Study of Individual Freedom in the Modern World.

Book Review by Jeremy Rabkin

LEAFING THROUGH OLD BOOKS

The Social Contract in America: From the Revolution to the Current Age, by Mark Hulliung.
University Press of Kansas, 264 pages, \$29.95



MARK HULLIUNG IS A CHAIRED PROFESSOR of history at Brandeis University, but his book is not really a work of history. Still less is it an essay in philosophy. It is not even wrong in interesting ways. Professor Hulliung has some opinions or at least some attitudes about politics. He has also had the leisure to leaf through some old books. He seems to think it is a contribution to scholarship to record whether, given his attitudes, various writers appeal to his taste. This is the sort of book that might have resulted had a publisher recruited a food critic to review the great books on politics and prescribe the proper wine to go with each. (Hegel goes best with heavy port.) It is the sort of book that confirms the popular impression that underneath their affectations and pretensions, university professors are at heart simply... silly.

Hulliung is obsessed with Samuel Pufendorf, a German commentator on natural law and the law of nations. Pufendorf served in various diplomatic posts in central Europe but he made his mark as a university professor. His treatises—still published in Latin—received a good deal of attention in the late 17th century. He was mentioned now and then by the American Founders, when they compiled citations from great works on the law of nations. It says something that no one thought to arrange for another English translation of Pufendorf's main work, *De jure naturae et gentium* (1672) for 200 years—between the initial version by Basil Kennett in the early 1700s, and the early-20th

century translation underwritten by the Carnegie Institute, which also sponsored English editions of such minor figures in the history of international law as Cornelius van Bynkershoek and Balthazar Ayala.

In Hulliung's book, Pufendorf plays a central role. Indeed he figures as the Professor Moriarty of natural law, a figure of vast and sinister importance, operating through a network of shadowy disciples, extending from the militarist councils of Friedrich die Grosse to the gracious plantation houses of Jacksonian America. We first encounter him intriguing with Loyalist opponents of the American rebels: "Loyalists found Pufendorf's argument to their liking because they could have their [social] contract and yet nullify its radical implications."

In a flashback, we learn that Pufendorf had already infiltrated among the defenders of England's Glorious Revolution: "Pufendorf's text was sufficiently ambiguous for many Whig pamphleteers to exploit it in 1688, no matter that it had long served German princes as a justification of royal absolutism." But his major works had only been published (in Latin) during the previous decade. Hulliung's misleading "long served" suggests the contrary: that year after year, Pufendorf's seductive formulae beguiled German scholars who were otherwise on the brink of overthrowing local grand dukes and reviving the traditional liberal spirit of the Pomeranian peasantry.

The Pufendorf spell proved potent in America, more than a century later. In the debate over

ratification of the Constitution, "Locke was a favorite of Federalists, Pufendorf of Anti-federalists." Later, in the antebellum South, defenders of slavery clicked their heels to Pufendorf's command: "It was from Grotius and Pufendorf that the Southerners learned their lessons in conflating 'is' and 'ought.' ...Southerners followed the lead of Pufendorf, who had issued a handbook emphasizing duties and relegating rights to a secondary status." If they hadn't studied Pufendorf, those Southern planters might have given up their plantations as mere ontological contingencies! By the time Hulliung is done, Pufendorf has been fingered for one or another historical calamity in 34 places—in a book on the social contract that mentions Hobbes on only four pages, and Rousseau on seven.

IN HULLIUNG'S DRAMA, FOR OVER THREE CENTURIES the heirs of Locke battled for freedom against the goose-stepping followers of the evil Pufendorf. In the Lockean conception of the social contract, Hulliung says, the people empower themselves, recognizing a common government only so long as it pleases them, while in Pufendorf's scheme, the people commit themselves to obey the government in "a contract of submission." One problem with this account is that, back when Pufendorf was a name worth dropping, hardly anyone who did so invoked him as the polar opposite to Locke. This is certainly not how Pufendorf appears in those passages where he is cited by Alexander Hamilton, James Madison, or John Marshall (almost al-

ways in company with the Lockean Emerich de Vattel). In fact, Locke himself, in *Some Thoughts Concerning Education*, recommended Pufendorf as a useful text to acquaint students with modern notions of natural law. But Hulliung's interpretation, which centers political thought on a supposed cosmic battle between Locke and Pufendorf, tends to push almost everything else to the margins. Even the actual arguments from Locke's *Two Treatises* are submerged in feel-good rhetoric about freedom and the power of the people.

Yet the implications of social contract theory are not at all obvious or uncontroversial even in Locke's version, let alone in later applications. According to Hulliung "the preamble of the Declaration of Independence...enshrined a full-blown version of Locke's theory." "Until quite recently," he explains, "groups suffering the ill effects of exclusion...appealed to the Declaration when staking their claims to full citizenship for all Americans. Slaves and former slaves, abolitionists, workers, women, immigrants, land reformers, single-taxers, Populists, and Debsian socialists—all have appealed to their fellow citizens in the name of the Declaration of Independence."

Were they right to do so? Start with the question of who is included in the contract. If government derives from an agreement among the governed, who can join? It is one thing to say that the right to liberty is inalienable, but something else to say that incorporation into a particular political community is automatic. Does government rest on consent or doesn't it? If those already in the community want to exclude others, as, for example, by tightening restrictions on immigration, do they have a right to do so? Hulliung, ignoring these questions, treats the whole issue with mere sloganeering.

HE GIVES THE SAME TREATMENT TO THE question of self-exclusion. "Locke broke with Pufendorf by transforming emigration into a natural right," he writes. He demonstrates this claim by quoting Locke's statement that "every man's children being by Nature as free as himself...may choose what society they will join themselves to." But Hulliung's version of the quotation (with the ellipses) drops Locke's essential qualification: "whilst they are in that freedom"—meaning in the state of nature. Later Locke is emphatic about what happens when one escapes the state of nature and joins an established society: "he that has once...given his consent to be of any commonwealth,

is perpetually and indispensably obliged to be, and remain unalterably subject to it, and can never be again in the liberty of the state of nature; unless by any calamity, the government he was under comes to be dissolved...." The American Founders took this seriously enough to have an extended debate in the 1790s on whether American citizens could simply renounce citizenship at will. Even today, travel abroad does not free a citizen of his legal obligations to the United States.

If government can transfer liberty from one group of citizens to another, along with property, does that mean followers of Eugene Debs and various prairie Populists were right to invoke the Declaration of Independence on behalf of forced redistribution of wealth? Can a government do this without limits? And if there is no limit, why is there a right to revolution? Hulliung is nearly silent on these questions, providing only epigrams like this one: "In the land of the social contract, all that is most important is subject to human choice." If this is true, what happens to "inalienable rights" or entitlements under the "Laws of Nature and of Nature's God"? Are they all subject to "human choice," or are they not "important"?

One might never guess from Hulliung's rambling discourse that in the actual text of the Declaration, after the introductory invocation of the "course of human events" (which might well be summarized as "whenever"); the first substantive word is not "free" or "equal," but "necessary." There could be no guarantees in nature if there were not predictable patterns—things that follow in "necessary" ways.

Of course, whatever else it means, the social contract implies an initial choice. But "contract" also implies commitment. So how does the social contract relate to a fixed constitution? Hulliung is keen to emphasize what he calls the Lockean view: that the social contract is all about freedom. "No human law, in Locke's world, is above the people," he writes. So can the people change the constitution at will? Hulliung seems to think so, relying on James Wilson's statement that "the people may change the [state] constitutions whenever and however they please" because "the supreme, absolute, and uncontrollable power remains in the people." What does it mean, then, that the federal Constitution—which Wilson played such a prominent role in framing—can only be amended through a cumbersome process, with the approval of three-quarters of the state legislatures as well as two-thirds of each house of Congress?

The Constitution actually goes further, expressly prohibiting any amendment that would deprive states of their equal representation in the Senate. Accordingly we have two senators from Wyoming and two senators from California, though the latter has some 70 times more inhabitants than the former. Does social contract theory require us to accept the original bargain, or does it require that the people retain a right to discard it? If the latter, how can divided societies ever persuade minorities to trust the majority?

HULLIUNG LAMENTS THAT WE DON'T talk much about the social contract these days. He attributes this decline to the Supreme Court's extension of the Bill of Rights to the states in the 1960s: "The Declaration had taught Americans to appeal beyond the laws and the Constitution to the natural rights of all persons, to the sovereignty of the people, the consent of the governed, the social contract. The new Bill of Rights made such appeals irrelevant...." He does not notice that the text of the Ninth and Tenth Amendments is utterly obscure without recourse to social contract theory. He does not notice that the whole question of whether and when to apply the Bill of Rights is tied up with disputes about how federal authority is constituted in relation to the states, and which "people" initially consented to state and federal authorities. Though he does acknowledge that "[i]n the United States, as in no other country, social contract and federalism became inextricably entwined," it does not seem to occur to him that anything interesting follows from this fact.

Hulliung rejects "the revived natural law philosophy of the 1950s" because it was "cut off from the rest of the social contract tradition" and guilty of "ethnocentrism." But the alternative is disappointing to him as well: Franklin Roosevelt's election speeches promised "binding together rights and social contract...like the fully realized social contract theory of yesteryear," but his New Deal "distinguished between deserving and undeserving poor, which was a far cry from welfare as a natural right guaranteed by the social contract."

This confusing set of associations is in no way explained anywhere in this book. But never mind. By the time I got to that point, I just had one question: how do we know Barack Obama hasn't been secretly reading Pufendorf?

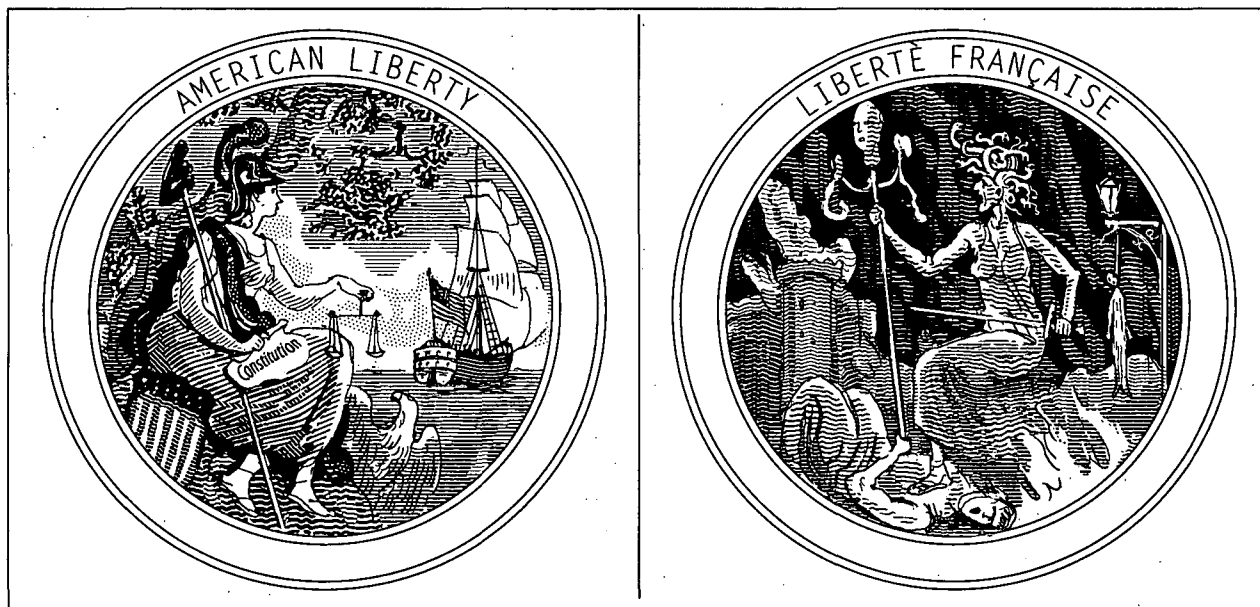
Jeremy Rabkin is professor of law at George Mason University School of Law.

Book Review by Richard Samuelson

POLITICAL HISTORY FOR A POLITICAL NATION

American Creation: Triumphs and Tragedies at the Founding of the Republic,
by Joseph J. Ellis. Alfred A. Knopf, 304 pages, \$26.95

The Great Upheaval: America and the Birth of the Modern World, by Jay Winik.
HarperCollins, 688 pages, \$29.95 (cloth), \$17.95 (paper)



Drawing by Elliott Banfield after an old print

IS POLITICAL HISTORY BACK? SHOULD IT BE? IN *American Creation*, Joseph Ellis laments that “most professional historians of the revolutionary era have opted to avoid mainstream politics altogether in favor of less articulate and more marginalized groups—a rather bizarre choice as I see it, somewhat akin to showing up at Fenway Park with a lacrosse stick.” Jay Winik agrees. In *The Great Upheaval*, he points out that “America never succumbed to organized violence, wanton repression, or institutionalized murder, which of course happened in cosmopolitan France and sparkling Russia. Instead, it chose a radical new path, of politics, thereby sowing the initial seeds of modern democracy.”

Although they have written very different books, both Ellis and Winik find that politics made America. While touring the country promoting his previous books, including *Founding Brothers* (2000) and *His Excellency: George Washington* (2004), Ellis discovered a peculiar fact: most ordinary Americans, unlike most professional historians, believe that the Founding Fathers actually did something. Ellis initially resisted the idea, but he has finally warmed to it, asking: if we exclude divine Providence, “What besides dumb luck can account for the achievement that was the American founding?” To an-

swer that question, he has written a book about the statesmanship of the founding.

As in his other books, Ellis takes an island-hopping approach to the era, focusing his commentary (and presumably his research) on particular events, places, or phenomena. The trouble with that approach is that Ellis sometimes focuses so narrowly on his chosen stories that he fails to provide their full context. As a rule, he spends too much time telling us why a particular story is important and too little time actually telling the story. That said, *American Creation* is often pithy and witty. Calling the spring of '76 “an election that lasted for several months” is sound, and labeling the Continental Army “an ever-shifting aggregate, part turnstile and part accordion” is both spot on and clever.

A political scientist by training, Winik, who has written fine books about Ronald Reagan's presidency and the end of the Civil War, tells the story of America, France, and Russia in the last part of the 18th century in order to describe, as his subtitle promises, “America and the Birth of the Modern World.” The moral of the story? Globalization is not new: what happened in Paris never stayed in Paris. Weighing in at nearly 600 heavily-inked pages (before notes),

The Great Upheaval is considerably longer than *American Creation*. The extra space gives Winik the luxury of painting on a canvas of heroic proportions the grand scenes of the French Revolution and Catherine the Great's wars. As a rule, the European chapters are more engaging than the American ones. Although seldom as witty as Ellis, Winik can turn a good phrase, e.g., “the Russian throne had been neither elective nor hereditary—it was occupative.” But he also writes a few clunkers, as in the Yogi Berra-esque: “the dawn of a new era had begun.”

Describing Europe's part in the “great upheaval,” Winik recounts episodes of war, terror, butchery, palace coups, and depravity of all sorts—men, women, and children being hacked, starved, burned, and beaten to death, not to mention mass executions, often in the name of liberty, equality, and fraternity. His account of French Revolutionary violence reminds me of John Adams's comment: “Helvetius preached to the French nation *liberty*, till they made them the most mechanical slaves; *equality* till they destroyed equity; *humanity* till they became weasels, and African panthers; and *fraternity* till they cut one another's throats like Roman gladiators.” Winik's America has no less political skulduggery, but considerably less blood and

butchery. Despite his claim that the Alien and Sedition Acts "were actions worthy of the most brutal despots and repressive regimes on the world stage," his book demonstrates otherwise. America took a different path than Europe did into the modern world.

WINIK CALLS THIS PATH "POLITICS," but what does he mean by the term? Neither he nor Ellis, for that matter, is ever entirely clear on the subject. Neither quite manages to escape from the cultural, social, and ideological frameworks that have come to dominate the study of American history. Each author makes a sharp distinction that would strike the founders as naïve, between politics as practicing the low arts of negotiation, compromise, and coalition-building on the one hand, and principled statesmanship on the other.

Both books make a formulaic distinction between America's "two founding moments"—a phrase both use. Ellis suggests that the Declaration "is a radical document that locates sovereignty in the individual and depicts government as an alien force," and that the Constitution "is a conservative document that locates sovereignty in that collective called 'the people,' [and] makes government an essential protector of liberty." Ellis is not being careful with his words. Presumably he does not mean to equate the "radicalism" that was "in the proverbial saddle" at the Constitutional Convention—the willingness to jettison the Articles of Confederation in favor of a wholly new constitution—with the radicalism of the Declaration. Beyond that, there is an anachronism here, for the terms "radicalism" and "conservatism," in their political meanings, were invented in Europe after the American Revolution, and don't quite describe the ideas of 1776 or 1787.

The limitations of Ellis's approach to the history of ideas come through in his discussion of the Declaration. A mere 11 pages after calling it a "radical document," he quotes its cautious reassurance that "prudence, indeed, will dictate that governments long established..." Although the chapter skimps on details, it nonetheless shows the prudence of the statesmen of 1776 who managed "the quite remarkable feat of making an explosion happen in slow motion." Ellis's story, however brief, is richer than his analysis. To the founders, principles and prudence were not entirely separable. They recognized the tension between the right of an individual to govern himself, and the right of men to live by laws of their own choosing. Prudence retained some of its classic political meaning in the American Founding. In that sense, the founding was neither "radical" nor "conservative." Ellis suggests that "the major political de-

cisions that shaped the founding were usually improvisational occasions." But those improvisations were framed by the ideas of 1776. Ellis credits James Madison with inventing the idea "that government was not about providing answers, but rather about providing a framework in which the salient questions could continue to be debated." In fact, that very idea emanated from the Declaration.

Paying closer attention to this idea of prudence would have helped both books. As a rule, Winik is a better student of intellectual history than is Ellis. Whereas the latter lumps Voltaire with Thomas Paine in the belief that "a society of genuine equality and justice would materialize naturally once the last king was strangled with the entrails of the last priest," the former recognizes that Voltaire was "neither a liberal nor a democrat." But when he turns from intellectual history to political history, Winik's instincts betray him. He rails against Alexander Hamilton's argument that the French Revolution rendered the Franco-American Treaty of 1778 null and void, calling it "sophistry." By contrast, Winik holds, Thomas Jefferson's counter-arguments "set the modern practice that nations recognize nations, not just particular governments." But isn't there a significant difference between a change of government—as the U.S. had in 1797 and 1801, or even a palace coup, as Russia had when Catherine died in 1796—and a revolution that not only changed the French regime, but also transformed its international orientation? To be appreciated, political ideas need to be examined with more nuance.

Ellis's discussion of America's extended sphere—the argument, made famous by James Madison in *Federalist* 10, that the multiplicity of interests in an extended republic renders it both more decent and more durable than a small republic—is a similar case. He is sufficiently acute to suggest that Madison needed to find an argument to use against Anti-Federalist claims that republics had to be small. Yet Ellis also claims that Madison's "was an idea so far ahead of its time that no one could fully appreciate its originality." But the idea that ideas belong to times is itself an idea of our time, not Madison's. Moreover, is it not worth asking if Madison was correct? How governments in fact work and how people think they work can be very different things. That distinction is essential to political history. Ellis further suggests that perhaps "the sheer proliferation of different sects and denominations led eventually to the principle of religious toleration because no single church or creed could achieve dominance," adding hesitantly that "this too might have struck Madison's mind." A bolder historian might have noted that Madison was fond of Voltaire's comment: "If

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there were only one religion in England, there would be danger of tyranny; if there were two, they would cut each other's throats; but there are thirty, and they live happily together in peace." Voltaire supported religious freedom before he discovered the English practice of religious pluralism. The principle shaped the interpretation, not vice versa. Similarly, Madison employed the idea of the extended sphere, as he wrote in No. 10, "to preserve the spirit and the form of popular government." Statesmanship often entails engaging in low politics in the service of high principles.

THAT CONCLUSION RETURNS US TO *THE Great Upheaval*. Winik's forte is his understanding of the role of contingency in politics. Wars are won and lost on the field. Dumb luck can change history. Describing Louis XVI's attempted escape from Paris in 1791, he shows both how the king's incompetence contributed to the plan's failure, and how close it came to succeeding, nonetheless. Turning to America, Winik describes how the Whiskey Rebellion's participants "tarred and feathered and whipped federal officials" and "began to erect mock guillotines and set up their own extra-legal courts." If they had had any success, would the French republic have supported them? President Washington could not be sure. In the event, a large muster of troops, led by Washington himself, cowed the rebels. Ellis skips past the Whiskey Rebellion in a couple of pages, but Winik gives it more attention. Washington mattered: "The convenient version of history takes the simple resolution of this whole matter for granted, that of course all neatly tumbled into place like a well-rehearsed melody; but in countless ways,

nowhere had danger and expectation been held in a more delicate balance than during the Whiskey Rebellion." Washington was no Louis XVI. He "acted decisively but with nuance, and the country got coalitions and politics" rather than the Terror and the guillotine.

Perhaps because he is uncomfortable with the idea that great men can make history, Ellis is at his best when describing the tragic limits of statesmanship. The best chapter in either of these books, and the only one that meets the test of political history head on, is Ellis's on U.S.-Indian relations. It is also the only chapter in which Ellis steps back and lets the story do the talking. Early in the first Washington Administration, Henry Knox, the Secretary of War, wrote the president that "to dispossess them...would be a gross violation of the fundamental Laws of Nature and of that distributive Justice which is the glory of a nation." Washington agreed. Such injustice to the Indians would "stain the nation." Knox held that U.S.-Indian relations should be grounded "on principles consistent with the national justice and dignity of the United States." For their part, the Indians appealed to the principles of 1776: "we are neither Birds nor fish.... We are made by the same hand and in the same shape with yourselves."

On one side of this negotiation sat Washington and on the other, Alexander McGillivray, the half-Scottish, quarter-French, quarter-Creek, half-mad Creek chief. Ellis has fun with McGillivray, calling him "an early American version of those modern-day Third World dictators during the Cold War who skillfully played off the major powers against one another." The chief's strategy was to pit the U.S. and the Spanish against each other—and at the same time,

push the federal government into conflict with land-hungry states (and their citizens) on the one hand, and a coalition of both Northern and Southern Indian tribes on the other. His goal was to break the American Union. American diplomacy helped to keep that from happening, but the federal government was unable to keep its end of the bargain—to keep American citizens from encroaching on Indian lands. "Knox sent a detachment of federal troops to police the borders, but it was like stopping a flood with a bucket of sponges." Here we see how a story well-told shows us politics in action in a way an abstract analysis seldom can. Doing justice to the Indians, as also to the slaves, might have killed the republic at its birth. When done well, political history reminds us of the limits of human action.

Both of these books suggest that America, unlike its European counterparts, understood the principles of 1776 as practical goals, not categorical imperatives. The French saw compromise as a betrayal of the Revolution, and Catherine saw no middle course between anarchy and repression; but the Americans grew adept at the art of principled negotiation and compromise. Drawing upon long years of political experience in the colonial era, statesmen and citizens (and in principle all American citizens are, to a small degree, statesmen), understood that self-government is a political thing. If, as both these books suggest, the key to American history is American politics, is it not time that our historians recognized that reality? Perhaps the political turn that Ellis and Winik make, however incomplete, is a sign of hope for the republic.

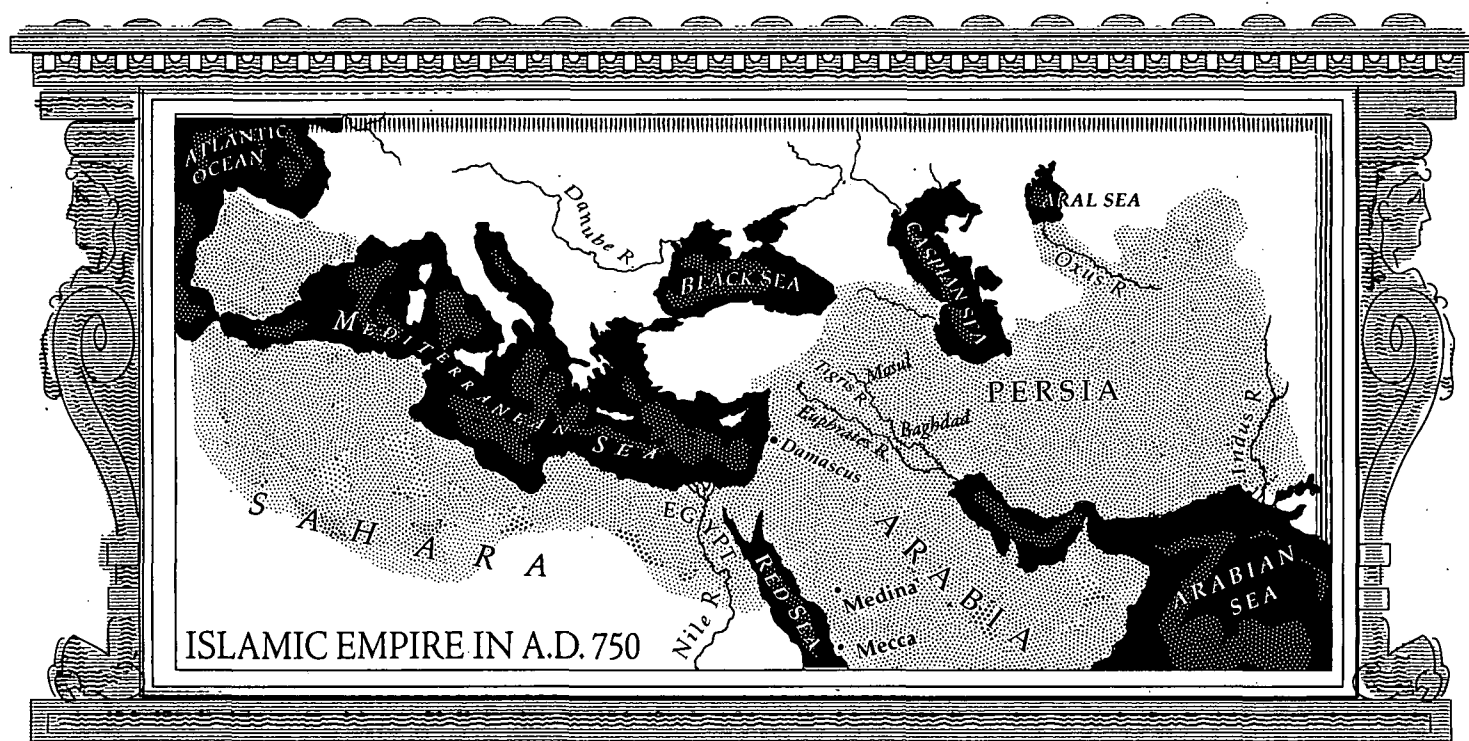
Richard Samuelson is assistant professor of history at California State University, San Bernardino.

Book Review by John Derbyshire

WHEN WORLDS COLLIDE

The Great Arab Conquests: How the Spread of Islam Changed the World We Live In, by Hugh Kennedy.
Da Capo Press, 448 pages, \$27.95

God's Crucible: Islam and the Making of Europe, 570 to 1215, by David Levering Lewis.
W.W. Norton & Co., 384 pages, \$29.95



HERE ARE TWO VERY DIFFERENT HISTORY books covering some of the same territory: the early conquests of Islam. Hugh Kennedy's book is the more comprehensive and scholarly, with detailed accounts of all the Arab advances into Africa, Asia, and Europe up to the fall of the Umayyad dynasty in A.D. 750. David Levering Lewis writes mainly of Europe, though the Arab conquest of the Roman possessions in Africa and the Middle East is adequately covered. His subtitle notwithstanding, Lewis spends little time—only the last three of his 16 chapters—on events later than the 8th century, so that the chronological overlap between the two books is greater than their titles indicate.

It is a sad reflection on the current state of popular historical writing that one approaches any book about Islamic history with the question: what's the angle? Historians with a bill of goods to sell are of course nothing new. Gibbon's pro-classical, anti-Christian bias; Macaulay's Whiggism; Carlyle's heroes; the Marxists' modes of production; Spengler's declinism; Churchill's Anglo-Saxon triumphalism; it sometimes seems to the general reader that "dispassionate historian" is an oxymoron.

In the matter of Islam, though, matters have become more serious lately. Some part of this has been a reaction to the anti-Western tone of "post-colonial" propagandists like Edward Said. Much more has been driven by the notion, widely held since September 2001, that the West is engaged in a critical civilizational conflict with the Muslim world. Whether or not we truly are in such a conflict is a large question all by itself. (My opinion: no.) If you believe we are, though, you ought to take sides, and many scholars have done so.

Most notable has been the rise of the Islamophobes: writers like Robert Spencer, Bat Ye'or, and Ibn Warraq, keen to tell us about the fundamental, irreducible wickedness of Islam and its founder. It is not clear to a non-specialist how seriously these Islamophobic writers should be taken. I note that the index or bibliography of either of the books under review show only one of these names, once: Ibn Warraq as editor of *The Quest for the Historical Muhammed* (2000). The Islamophobes have gathered a huge following, though, and put at least one Arabic word, *dhimmi*, into fairly general circulation.

DAVID LEVERING LEWIS'S *GOD'S CRUCIBLE* has not been well received by the Islamophobes. In fact, Lewis, a professor of history at New York University, seems to have been placed in their Hall of Shame, along with historian of religion Karen Armstrong. (Ms. Armstrong, who does appear in Lewis's index, though not in Kennedy's, committed the unpardonable crime of writing a sympathetic and very readable biography of the prophet Mohammed.) The reason for Islamophobic hostility to Lewis is not hard to figure out. Take, for example, this passage. The subject is the Battle of Poitiers, which English schoolboys of my generation were presented with as the Battle of Tours. This was the occasion in A.D. 732 when the Frankish ruler Charles "the Hammer" Martel defeated an Islamic army that had crossed the Pyrenees into France.

Had [Muslim general] 'Abd al-Rahman's men prevailed that October day, the post-Roman Occident would probably have been incorporated into a cosmopolitan, Muslim *regnum* unobstructed by borders...one devoid of a priestly caste, ani-

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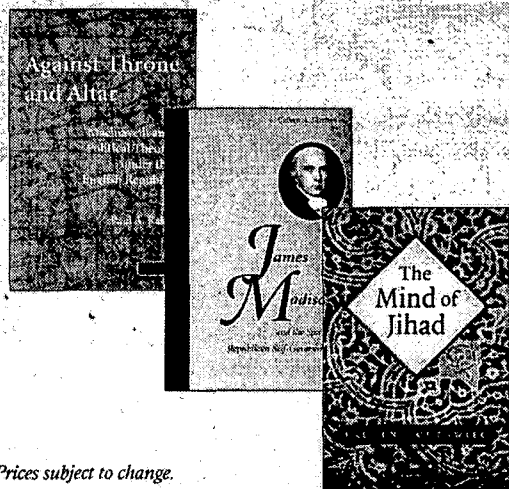
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mated by the dogma of equality of the faithful, and respectful of all religious faiths. ...[T]he victory of Charles the Hammer must be seen as greatly contributing to the creation of an economically retarded, balkanized, fratricidal Europe that, in defining itself in opposition to Islam, made virtues out of religious persecution, cultural particularism, and hereditary aristocracy.

Cosmopolitan! Unobstructed by borders! There is a job waiting for David Levering Lewis on the editorial board of the *Wall Street Journal*, should New York University decide to dispense with his services.

We learn from Lewis's NYU website that: "His work reflects the mutual dependence of African and African-American history, as well as the utility of biography in the exploration of American race, class, and politics.... [H]is two volumes on the life of W.E.B. DuBois [sic] won the Pulitzer Prize...." Du Bois was an early 20th-century black American intellectual and activist. Lewis has also written a book about the Dreyfus case. What's his angle? Celebrating diversity.

To be fair, Lewis tells us in his book's preface what he's about:

Although the arc of my professional interests have [sic—the book is poorly edited; or perhaps, as often seems to be the case nowadays, not edited at all] been eclectic...the central concern was the critical yet sympathetic exploration of lives exemplifying...courage or integrity, intellect or calculation in the face of injustice, religious exclusion, and organized plunder.

"Can't we all get along?" asked Rodney King. "Yes!" replies Lewis in effect, "and once upon a time we did—in the *convivencia*, the spirit of tolerant coexistence that prevailed in Muslim Spain. And the rest of Europe could have had *convivencia* too, but for that darn Charles Martel and those fool Popes!"

The new Carolingian order [of the later 8th century]...was religiously intolerant, intellectually impoverished, socially calcified, and economically primitive. Measured by these same vectors of religion, culture, class, and prosperity, 'Abd al-Rahman's Muslim Iberia was at least four centuries more advanced than Western Christendom in 800 CE. An ironic intelligence from another planet might have observed that if Carolingian Europeans believed that Charles the Hammer's victory at Poitiers made their world possible, then it was a fair question to ask whether

or not defeat might have been preferable.

What can one say about this sort of thing? Is there any truth in it? Well, yes, there is *some*. It is often the case, in history's great churnings, that one nation strides ahead of another, only to fall back into decadence or barbarism a century or few later. And as Michael Hart notes in his recent book *Understanding Human History*: "Although at times the Moslem world was more advanced culturally than the Byzantines, it was never *much* more advanced." Notice Lewis's comparison, though: *Western Christendom, Carolingian Europeans*. His is a much narrower scope than a thorough comparison of Islam and Christendom would require.

Counterfactual speculations of the kind that Lewis is trading in are in any case airy and insubstantial because we lack the knowledge required to evaluate them. Is there, for instance, something in the collective character of a people that predisposes it to *these* historical outcomes rather than *those*? The Franks and other German-speaking peoples of northeast Europe, even before they emerged from their forests, seem to have been quite unusually fond of moots and councils, of liberty and disputation, of electing their leaders and honoring their women. If Poitiers had gone the other way and Islam had swept across Europe, would it have changed the Franks, or they it? Does religion actually make anything happen? Are the upstream variables mostly just biological, as Hart argues? (He thinks the Muslim world never got anywhere much because its base Mideast and North African populations didn't contain enough smart people.) Your guess is as good as mine, or Hart's, or Lewis's.

If you can put the counterfactual stuff out of mind and close your ears to the sound of ax-grinding, *God's Crucible* is not without redeeming features. It has in fact something of a Carlylean cast to it, with history being made by charismatic heroes, whom Lewis draws very well. Those years of toiling away at biography have left him with sharp perceptions of personal character. The two outstanding figures here are Charlemagne and 'Abd al-Rahman I. The former was the grandson of Charles Martel, and founder of the Frankish (later, the Holy Roman) Empire. The latter was *not* the losing general at Poitiers, but an Umayyad prince of the same name who escaped the Abbasid revolt of A.D. 750 and made his way to Spain, where he established an Umayyad rump state that lasted another 300 years.

The reigns of Charlemagne and the older (by 16 years) al-Rahman overlapped for two decades, from A.D. 768 to 788, giving Lewis the opportunity for a joint pen-portrait. Al-Rahman, "the exquisitely educated Umayyad prince whose rule over *al-Andalus* had already run a dozen years when Pippin's oldest son inherited the Aus-

trasian kingdom" naturally comes out ahead of Charlemagne, though Lewis allows that the latter was "a barbarian more deeply impatient with the intellectual poverty of his fellow barbarians than perhaps any other well-positioned German since the collapse of the Roman Empire."

(I note in passing the pleasure a reader gets from Dark Age sobriquets: Charlemagne's father was Pippin the Short; his mother was Bertha Bigfoot. We also encounter Wilfrid the Hairy, Sancho the Fat, 'Amr the One-Eyed, and, most pitiable of all, al-Walid the Inadequate.)

HUGH KENNEDY'S BOOK, WHILE ALSO aimed at a general readership, is of a very different kind. Kennedy is a professional Arabist and medievalist who has written a shelf of books on early Islam. His aim in *The Great Arab Conquests* is strictly narrative: to tell a curious nonspecialist what the Arabs did between the death of Mohammed in A.D. 632 and the fall of the Umayyads 118 years later. There are no counterfactual speculations here; and if there is an ax being ground, the noise is below my threshold of hearing. Kennedy's book is less fun to read than Lewis's, but it is also less irritating, and it inspires far more confidence that one is learning about things that actually happened.

Both authors, in laying the groundwork for their stories, emphasize the exhaustion of the world in the early 6th century as a consequence of the long destructive wars between Rome (and

Rome's successor at Constantinople) and Persia. The foremost reason for those early Arab successes is that they were kicking in a rotten door, worn away by rampaging armies and the great 6th-century cycles of pestilence that began with the Plague of Justinian in the 540s. No doubt the Arabs were afflicted by these plagues as well, but their simpler way of life and their lower population density meant they suffered comparatively less. (This was a situation mirrored in Britain, where burial sites suggest lower mortality among the incoming Germanic peoples than among the more civilized Romano-British.)

Lewis does not mention the plagues, but Kennedy gives them full coverage:

When the Muslim conquerors entered the cities of Syria and Palestine in the 630s and 640s they may have walked through streets where the grass and thorns grew high between the ancient columns and where the remaining inhabitants clustered in little groups, squatting in the ruins of the great palatial houses their ancestors had enjoyed.

Note the conscientious historian's "may have." Kennedy is at pains all through his book to emphasize the scarcity and unreliability of sources for the period. This was, after all, the Dark Ages. Kennedy tells us what is known. When

he has to choose between conflicting accounts, or fill a void with speculation, he does so with utmost caution and many warnings. He is a real historian, doing what a historian ought to do.

This is not to imply that *The Great Arab Conquests* is unrelievedly dry—Kennedy has a good eye for a colorful story. The death of Yazdgard III, an episode in the Arab conquest of Persia, is well told, and quite Shakespearean in its interplay of fate and human emotion (Kennedy actually calls the later regrets of the regicide "Macbeth-like"). Our author is not above literary diversion, either. He breaks off from his narrative of the advance into Transoxania to remind us of some of the loveliest lines in English verse, the ones that close Matthew Arnold's poem "Sohrab and Rustum," where the poet follows the course of the mighty Oxus until:

The longed for dash of waves is heard, and wide
His luminous home of waters opens, bright
And tranquil, from whose floor the new bathed stars
Emerge, and shine upon the Aral Sea.

Any writer who loves those lines is a friend of mine. These are both interesting books, each in its own way; but it is Kennedy's that I shall be taking down from the shelf many times, I am sure, while Lewis's gets culled in the next trip to the second-hand book dealer.

John Derbyshire is a writer living in New York.

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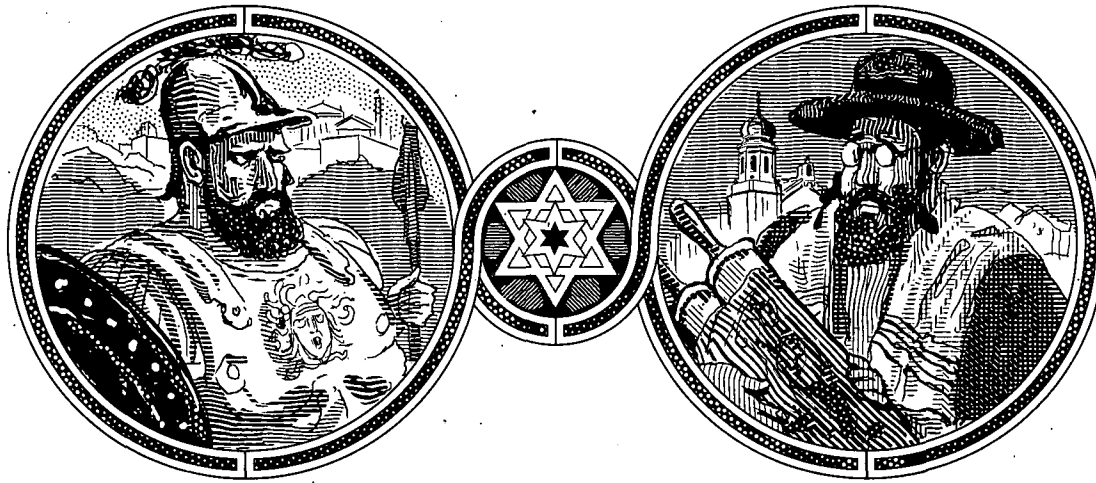
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Book Review by Edward Alexander

FIRST, SURVIVE

Jews and Power, by Ruth R. Wisse.
Nextbook-Schocken, 256 pages, \$19.95



“CLEAR YOUR MIND OF CANT.” HAS ANYONE who writes today about the political dimension of Jewish experience ever taken this motto of Samuel Johnson’s to heart more than Ruth Wisse? Has any contemporary voice laid siege more effectively to the barricades of stale cliché and bad logic that obscure the “Jewish problem”?

You may have heard that Jews are an intransigent minority responsible for Communism in capitalist countries, capitalism in Communist countries, cosmopolitanism in nationalistic countries, and, in the minds of “realist” foreign-policy experts, every evil on the globe except avian flu. In fact, Wisse shows, the Jewish problem is really the problem of nations that must blame their dysfunction on Jews. Perhaps you have been told that Jews are too powerful (“98% control,” according to Noam Chomsky). On the contrary, “in the real world, Jews have too little power and influence...[and] too little self-confidence about defending themselves.” Do you believe, as did isolationist foes of American entry into World War II or the current war against terror, that Franklin D. Roosevelt and George W. Bush caved in to Jewish demands that damaged genuine American interests? On the contrary, these leaders went to war not to save Jews but to defeat Nazism and Islamic fascism, which also (not accidentally) were anti-Jewish. Do you believe that the creation of Israel solved the problem of the Jews’ relation to political power? You are mistaken: the permanent state of siege in which the Jewish state exists reproduces the constant burden of peril and political

imbalance of the Diaspora. Do you think that moral superiority over their enemies is the chief desideratum for Jews, as when Golda Meir told Egypt’s Anwar Sadat she could forgive him for killing “our sons” but not for “making us kill yours”? Think again, urges Wisse: remember that your enemies’ designs upon you are a more urgent concern than your children’s decency. To be decent, you need to be alive.

Although Wisse has spent her professional life as a teacher and scholar of Yiddish literature and language at Harvard, she approaches these questions without the prejudices common among her colleagues. In 1954 Irving Howe praised Yiddish literature and the culture it reflected for the very characteristics that made the opposing camp of secular Jews, the Zionists, spurn it: “The virtue of powerlessness, the power of helplessness, the company of the dispossessed, the sanctity of the insulted and the injured....” Though in later years Howe and Wisse became friends and literary collaborators, he strongly disapproved of her forays into political writing and considered her view of Jewish history and politics incompatible with Yiddish tradition.

Wisse has always taken a very different view. In *Jews and Power*, she argues that when Jews were vanquished and sent into exile from their homeland they decided (unlike other conquered peoples of the ancient Near East—Jebusites, Hittites, Gergashites) to remain faithful to their God and covenant; they were convinced that they had been exiled because of their sins and not because their God had proved powerless to protect them. Jews recognized that the price of

such loyalty might be poverty and powerlessness, yet this was a price they were willing to pay. “But,” insists Wisse, “when Jews then take that a step further and say that to be a Jew is to be weak and powerless—this is...romanticization, because Jews never wanted to be weak or poor. And until recently they certainly never made a virtue of it.”

Glorification of powerlessness, she contends, is in fact antithetical to Judaism. Powerlessness does worse than corrupt, it eliminates: prior to Constantine’s establishment of Christianity, Christianity and Judaism had almost equal numbers in Europe. The tendency to romanticize powerlessness and an abnormal political existence ought to have come to an end during World War I, when “an estimated half million Jews fought in the uniforms of the vying armies of Europe with no one to prevent the violence directed at them.” For Wisse, the crucial link between the study of Yiddish literature and the study of Jewish politics is that the “Yiddish language, developed by European Jews over almost a thousand years, was practically erased along with them in a mere six, 1939–45. So studying Yiddish literature...concentrates the mind on Jewish political disabilities.”

J EWS AND POWER IS A SHORT BUT AMBITIOUS book, a critical history of the Jews’ problematic relation to power from 70 C.E. through the Oslo Accords and their catastrophic aftermath. The prologue presents the book’s defining anecdote, an incident in occupied Warsaw in 1939. After Nazi soldiers harassed a Jewish

child, his mother picked up the bruised little boy and said: "Come inside the courtyard and *za a mentsh*." The mother was telling her son, in a well-known Yiddish expression, to become a decent human being. Although that term conveyed to many Yiddish-speaking Jews the essence of "Jewishness," and Wisse herself was taught to revere it in her Montreal Jewish school, she now calls it into question. For she had also learned from her school's principal what had happened to Jewish children in Europe. "If each of you," he told the children, "was to take a notebook and write on every line of every page the name of a different child, and if we collected all your notebooks, it still would not equal the number of Jewish boys and girls who were murdered by the Germans." The little boy in Warsaw could not have done as his mother urged, Wisse concludes, "because becoming fully human presupposed staying alive." An injunction to behave decently that disregards your enemy's intention to remove you from the world is "moral solipsism," a peculiarly Jewish affliction that Wisse in an earlier book defined as "the Jewish moral strut."

The book disputes the commonplace that Jewish politics ended when Jews left their ancient homeland. In fact, Wisse argues, they were just as politically active outside the land of Israel, despite the fact that in the Diaspora they were a nation without nationhood, land, central government, or means of self-defense, a people denied the dignity of being a people. But the abiding centrality of Jerusalem and of Hebrew in Jewish worship made them a dispersed rather than a dismembered people. Jews in the Diaspora tried to retain control over their national destiny by accepting responsibility for political failure. They devised a strategy of accommodation to defeat, and dependency on local rulers for protection. Jewish life outside of the ancient homeland would be determined by the best bargain that Jews could strike with Gentile rulers. It afforded them temporary advantages, but the greater the benefits Jews derived from those in power, the greater the power rulers had over them. When necessary, their erstwhile protectors would sacrifice them to mob violence. The longer Jews remained in exile, the more they acquired the reputation of being easy prey.

Emancipation in Europe had its unanticipated perils. Modern Jews were disappointed to find that the replacement of one-man autocracies and systems of state censorship by elected assemblies, the popular press, and other democratic institutions actually reduced Jewish influence and left them in many respects worse off than before. With kings toppled from their thrones, the new Hamans appealed to the citizenry, often with great success. Old-fashioned religious Jew-

hatred evolved into "anti-Semitism," a term invented in 1879 by the German agitator Wilhelm Marr to distinguish the old hatred from its new manifestation grounded in race theory. Anti-Semitism, according to Sir Jonathan Sacks, Britain's current chief rabbi, "exists...whenever two contradictory factors appear in combination: the belief that Jews are so powerful that they are responsible for the evils of the world, and the knowledge that they are so powerless that they can be attacked with impunity."

This combination of an enormous image (Christ-killers, bloated plutocrats, Zionist imperialists), with almost no political power proved irresistible to a new legion of predators. Anti-Semites called the Jews' talent for successful accommodation to unfavorable political circumstances a quest for domination. "The diabolical element in this accusation," observes Wisse, "was to have charged the Jews with seizing the political power they were unwilling to wield. Marr's attack on the Jews would succeed precisely because they lacked the will to political power of which he accused them." By the end of the 19th century the new anti-Semitism, culminating in the Dreyfus Affair, the dress rehearsal for the Nazi movement, had become "the most effective political ideology in Europe." It provided European politicians with a simple explanation for whatever was going wrong: revolution, psychoanalysis, pornography, moral turpitude. This pan-European campaign against the Jews as the cause of all misfortunes foreshadowed in several ways today's "new anti-Semitism" that fixates on Israel, not least in employing the scam which claims that Jewish responses to the campaign of defamation are proof of just how much power Jews do wield and how they use it to "stifle" all "criticism" of Israel.

ALTHOUGH WISSE DOES NOT EXPLICITLY reproach Jews for the political strategy they adopted during centuries of exile, she insists that by the end of the 19th century it was clear that they needed an alternative to a failing strategy. This alternative was Zionism, which even the sour Hannah Arendt called the "only political answer Jews have ever found to anti-Semitism and the only ideology in which they have ever taken seriously a hostility that would place them in the center of world events." The "Return to Zion" represented both a break with the old politics of adaptation and a continuation of it; a belated recognition of the need for self-defense and a persisting Jewish inability to see themselves through the eyes of their enemies; a rescue of the Jews from their status as a pariah people and a discovery that the pariah people has become the pariah nation. "Not until [Ze'ev] Jabotinsky thought of organizing Jewish military units in the British army," she

writes, "did Zionist leadership begin to consider the possibility of a Jewish armed force that would fight under its own insignia and flag." Again the repudiation of "Yiddish" wisdom was required to see the obvious. Jabotinsky wrote that "this very normal idea [i.e., self-defense] would have occurred...to any normal person." The last phrase, rendered in colloquial usage by the Yiddish *goyishe kop*, expressed Jabotinsky's wish that Jews, forever preening themselves on their supposed cleverness, would become as commonsensical as the rest of the world.

But even those Zionist leaders who managed to acquire something of a *goyishe kop*, like Jabotinsky and David Ben-Gurion, could not foresee that the Arab and Muslim countries would make anti-Zionism into a way of life, and the Palestinian Arabs into a kind of anti-nation deriving their entire meaning and purpose from the goal of destroying Israel. Nor did they foresee that the Diaspora strategy of accommodation could take its deadliest form in Zion itself, in the strategy of yielding contiguous territory to enemies dedicated to Israel's destruction, financing and arming their forces in the hope of conciliating them and gaining security. No *goyishe kop* in the history of nations had ever come up with such a clever idea, the ultimate expression of "moral solipsism." Obviously the creation of Israel has not solved the problem of the Jews' relation to political power. Truly to be moral, Wisse argues, modern Jews, who are largely without faith in the power of the Almighty, must themselves supply the missing dimension of power; otherwise, they sign a suicide pact with each new enemy that comes along.

Wisse concludes by returning to a theme adumbrated in her introduction: the question of why Jews have figured and still figure so prominently in the politics of regimes that also threaten the rest of the world: Nazi Germany, the Soviet Union, Iran, and the multitudinous troops of Islamic fascism. Although this is more bad news, it does have a positive dimension: namely, that the Jews' new political status, achieved by the existence of a Jewish state, has given them a new role as an ally, with something to offer America and the other democracies. She believes that America, at least, is learning the lesson that "thugs who get away with harassing Jewish citizens go on to torch the rest of the citizenry." *Jews and Power* is a powerful salvo in the war of ideas over the Jewish state, a war that Israel has been losing almost as steadily as she has, until recently, been winning on the battlefield.

Edward Alexander is emeritus professor of English at the University of Washington. His most recent book (co-authored with Paul Bogdanor) is *The Jewish Divide over Israel: Accusers and Defenders* (Transaction Publishers).

IN THE BEGINNING

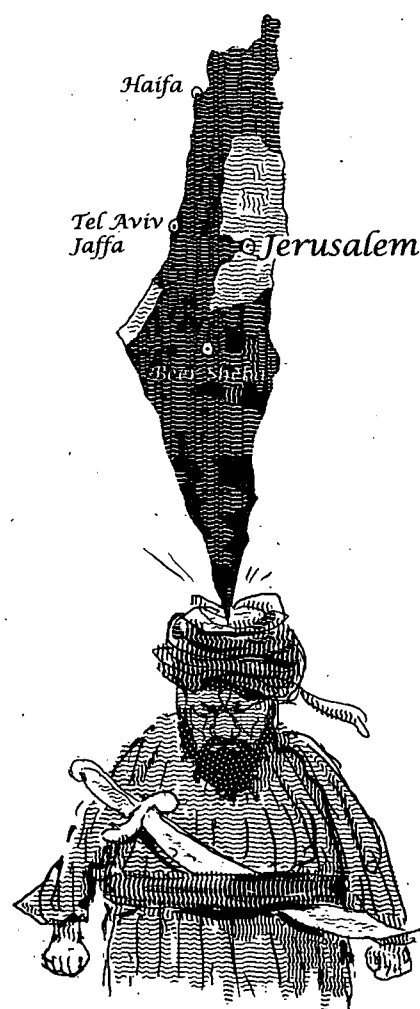
1948: A History of the First Arab-Israeli War, by Benny Morris.
Yale University Press, 544 pages, \$32.50

IN THE MIDDLE EAST, THE PAST BEARS UPON the present with special intensity. Sixty years on, the Arab-Israeli war of 1948—which Palestinians call *al-nakba*, or the catastrophe, and Israelis call the War of Independence—still nourishes irreconcilable interpretations of the conflict it inaugurated. However one reads the story of that confrontation—as stirring national liberation or as deliberate ethnic cleansing, as immaculate conception or original sin—this first chapter in an ongoing drama determines how one regards Israel itself. A new book, the most comprehensive so far on the subject, pairs this most contentious war with Israel's most contentious historian.

In the turbulent wake of his much-discussed 1988 book, *The Birth of the Palestinian Refugee Problem, 1947–1949*, Benny Morris, a kibbutz-born, Cambridge-educated professor of history at Ben-Gurion University, surfaced as the most influential of Israel's revisionist New Historians. Aided by newly opened Israeli archives, this group of younger scholars, including Avi Shlaim, Tom Segev, and Ilan Pappé, called into question the country's cherished founding myths, and the assumptions of its collective memory.

Much to the delight of Israel's post-Zionist intelligentsia, Morris claimed that a policy advocating "transfer" of Palestinians was built into Zionism, which he described in *Righteous Victims: A History of the Zionist-Arab Conflict, 1881–2001* (2001), as "a colonizing and expansionist ideology and movement...intent on politically, or even physically, dispossessing and supplanting the Arabs." In blaming Israel—and its first prime minister, David Ben-Gurion, whom he painted in Machiavellian shades—for the mass exodus of Palestinian refugees, Morris sought to expose a darker side of the story of 1948.

For this unmasking, Morris earned much praise from the Left. Edward Said, for instance, lauded him for showing "that it was a sequence of Zionist terror and Israeli expulsion that were behind the birth of the Palestinian refugee problem." Just as predictably, Morris drew fire from mainstream Israeli historians like Shabtai Tevet, who dismissed Morris and the New Historians as peddling a "farrago of distortions, omissions, tendentious readings, and outright falsifications."



After the failed Camp David summit in 2000, however, when Yasser Arafat turned down Israeli prime minister Ehud Barak's offer of a Palestinian state in the West Bank and Gaza Strip and launched a second, bloodier *intifada* of suicide bombings, Morris abruptly revised his revisionism. He began to acknowledge a long thread of obduracy, folly, and rejection that ran through the entire history of Palestinian nationalism—"a rejection, to the point of absurdity, of the history of the Jewish link to the land of Israel; a rejection of the legitimacy of Jewish claims to Palestine; a rejection of the right of the Jewish state to exist." The Palestinian leaders, he now saw, sticking fast to their vision of a Greater Palestine, rejected every compromise offered them, from the Peel Commission partition proposal of 1937 and the U.N. Partition Plan of 1947 to the peace proposals offered by Yitzhak Rabin at Oslo and Barak at Camp David.

Morris himself still advocated a Palestinian state, and considered the Israeli settlement

movement misguided. But if in the 1990s he believed that the Palestinians had finally accepted the need for a compromise to achieve a two-state solution, by following the thread of their tenacious rejection of negotiated accommodation he now reluctantly concluded that they had all along ultimately sought Israel's destruction. Morris became, in other words, a symbol of the Israeli Left's disillusionment.

MORRIS'S ABOUT-FACE DID NOT FIND favor in the eyes of his erstwhile colleagues. "Morris flipped out as a result of three years of terrorism," Segev said. Pappé denounced Morris's "abominable racist views," declaring that he "was never a proper historian" but a "charlatan."

With its meticulous scholarship, Morris's latest book refutes that charge. The story he tells hinges on three points. The first is that from the Arabs' perspective the war of 1948 was not merely a territorial dispute, but a battlefield in the struggle between Islam and the West. Well before 1948, Arabs both inside and outside Palestine came to see the Jewish community there not only as an infidel presence in the heart of the Middle East, but as a beachhead of Western imperialism, embodying all the sins they imputed to the West. (The same view, two decades later, informed the Palestine Liberation Organization Covenant, which accused Israel of being "a geographic base for world imperialism placed strategically in the midst of the Arab homeland.")

Accordingly, Morris paints the backdrop to the war by drawing from the palette of the jihadi rhetoric that preceded it. Imams across the Arab world, he says, alluded to the *hadith* (oral tradition) which teaches that "the day of resurrection does not come until Muslims fight against Jews, until the Jews hide behind trees and stones, and until the trees and stones shout out, 'O Muslim, there is a Jew behind me, come and kill him.'" Undeterred by the fact that in 12 centuries of Muslim rule Palestine had never been treated as a distinct political territory by its rulers, they now pressed the Crusader analogy into service, invoking Saladin's liberation of Palestine from the Christians.

As early as 1899, the mufti of Jerusalem proposed that all Jews who had come after 1891,

the "new Crusaders," be expelled or harassed into emigrating. In 1920, the pan-Arabist Awni Abdel Hadi vowed to fight "until Palestine is either placed under a free Arab government or becomes a graveyard for all the Jews in the country." In 1929, that kind of rhetoric bore fruit: rioting Arabs killed about 130 Jews—a massacre that would be repeated during the Arab revolt of 1936–39.

As war loomed nearer, the belligerent rhetoric intensified. In 1946, a Baghdad newspaper called on Arabs to "annihilate all European Jews in Palestine." "We will sweep them into the sea," Arab League Secretary-General 'Abd al-Rahman Azzam announced just before the invasion. The mufti of Egypt proclaimed jihad in Palestine as the duty of all Muslims, and King Abdullah of Jordan pledged to rescue Islamic holy sites.

Morris's portrait of the Arab politics of hatred brings us to the second point that gives his narrative its inexorable motion: Arab rejectionism. In 1937, after governing Palestine since the end of the First World War, Britain convened the Peel Commission, which noted "the general beneficent effect of Jewish immigration on Arab welfare," and recommended a partition of Palestine, granting Jews 20%, and Arabs more than 70%. Arab leaders rejected the proposal, insisting on all of Palestine. So too with Britain's 1939 White Paper, which severely curtailed Jewish immigration, and promised Palestinian statehood within ten years. The Arabs demanded instead immediate independence and complete cessation of Jewish immigration.

In early 1947, the British had at last had enough, and resolved to withdraw their 100,000 troops and officials. This prompted United Nations Resolution 181, which once more proposed partition, with Jerusalem and Bethlehem under international control. Although Zionist leaders welcomed the new proposal, the Arab leaders opposed it, and threatened war should the resolution pass.

When on November 29, 1947, two-thirds of the General Assembly voted to approve partition, and thereby a Jewish state, the Arab delegations declared the resolution invalid. In response, anti-Jewish mobs took to the streets in Cairo, Damascus, and Bahrain. Seventy-five Jews were killed in pogroms in Aden, Yemen. Ten synagogues were torched in Aleppo, Syria. The Jews of Palestine, on the other hand, listened in ecstasy to the broadcast from Flushing Meadows. In his diary, Ben-Gurion wrote: "I looked at them so happy dancing and I could only think that they were all going to war."

Circumstances proved Ben-Gurion right, though perhaps sooner than he expected. The war that broke out the next day unfolded in two phases. The first stage, lasting from November

30, 1947, to May 14, 1948, amounted to a civil war marked not by pitched battles but by small-scale guerrilla fighting that pitted Palestine's 630,000 Jews against its 1.3 million Arabs.

WHEN THE FIGHTING BEGAN, PALESTINE'S Jews could field two or three tanks, no combat aircraft, and almost no artillery. Yet although outmanned and outgunned, their fledgling army—many of its soldiers survivors of the Holocaust—fought fiercely. During the British Mandate, they had raised a 35,000-member-strong militia, the Haganah, which evolved into the Israel Defense Forces (IDF) in June 1948. With the aid of the Palmach, its commando strike force (including the young Yitzhak Rabin), the Haganah defended Jewish communities, freed illegal Jewish immigrants from British prisons, blew up railway tracks and bridges, and ran secret arms factories. "It must be emphasized," a Haganah directive declared, "that our aim is defense and not worsening the relations with that part of the Arab community that wants peace with us." The Haganah competed with two more militant underground paramilitary groups, both condemned by the mainstream Zionists: Ezel, the military arm of the Revisionist party, with its 2,000–3,000 members under the command of Menachem Begin; and the Lechi ("the Stern gang"), a tiny group of fewer than 500 fighters.

In this first stage of the war, the Haganah battled local militias and the Arab Liberation Army (ALA), comprising volunteers from Palestine, Syria, and Iraq who were trained in Syria and commanded by the Iraqi general Ismail Safwat. The ALA's symbol was a dagger dripping with blood, thrust into a Star of David. Aided by the likes of Fawzi al-Kutub, who learned bomb-making from the Nazi SS during World War II, the Arabs ambushed Jewish transports, attacked civilians, and assaulted Jewish quarters of cities throughout the country.

As Morris shows, early ALA successes caused a sense of despair to grip the Jewish community, especially in besieged Jerusalem. The first victories also impeded international support for Jewish statehood. Secretary of State George Marshall, for instance, reportedly said that the U.S. may have erred in supporting partition. Warren Austin, the American representative to the U.N., delivered an anti-partition speech at the Security Council.

Desperate to persuade the world of the viability of a future Jewish state, the Haganah shifted to an offensive stance; it started acting less like a ragtag underground militia and more like a disciplined army. As winter gave way to spring, the Haganah secured roads—especially on the western approach to Jerusalem—took villages which Arab militias had used as forward bases,

and conquered Arab neighborhoods in Haifa, Tiberias, Jaffa, and West Jerusalem.

On May 14, after five and a half months of guerrilla fighting, High Commissioner Alan Cunningham left Jerusalem, bringing the British Mandate to its formal close. That afternoon, Ben-Gurion declared the establishment of the state of Israel. Minutes later, President Harry Truman granted de facto recognition to the new country.

The second, full-scale stage of the war began the next day. Some 20,000 combat troops—Egyptians, Syrians, Iraqis, and Arab Legionnaires from Jordan (led by experienced British officers)—poured into Israel, bent on strangling the state at its birth. On the one hand, the invaders enjoyed the initiative, the high ground, disproportionate economic resources, and overwhelming advantages in heavy weapons and firepower. (An August 1947 CIA report had predicted that if war broke out, the Arab forces would triumph.)

On the other hand, the Arab armies were hampered by incompetence, inadequate training, and disunity. Their war plan, Morris writes, amounted to nothing more than a "multilateral land grab" on the part of Arab leaders who gave no thought to Palestinian Arab aspirations, and assigned them no role in the invasion. Jordan's King Abdullah, for one, had no interest in a Palestinian state on his doorstep.

In the next few weeks, more Arab brigades rushed to battle. Jordanian troops took the West Bank unopposed, beat back Israeli attempts to take Latrun (which controlled access to Jerusalem), indiscriminately shelled West Jerusalem, and captured the Jewish Quarter of the Old City. (When Israel recaptured the Old City from Jordan in 1967, all but one of the quarter's dozens of synagogues were found destroyed.) The Egyptians began their campaign with air raids on Tel Aviv (including an attack on the central bus station that killed 42 civilians). But the momentum of their ground assault from the south was halted by settlements like Kibbutz Nirim—where 45 Haganah defenders, armed only with light weapons, staved off an assault by nearly 500 infantry backed by artillery and armor—and Kibbutz Yad Mordechai, named after Mordechai Anielewicz, hero of the Warsaw Ghetto uprising. The Egyptians were eventually halted 18 miles short of Tel Aviv. The Iraqi force, meanwhile, the largest in Palestine, took Samaria, and routed the Jewish opposition in Jenin. (The Syrians fared worse: they thrust south of the Sea of Galilee, but were defeated so badly that the Syrian defense minister and chief of staff resigned within days.)

In mid-June, after a month of all-out fighting, a truce brokered by Swedish aristocrat Count Folke Bernadotte, the U.N.'s special mediator,

came into effect. Two weeks later, the Israelis agreed to a month-long extension of the truce; the Arab League unanimously rejected it. When fighting resumed in July, it became clear the IDF had taken better advantage of the respite. "We spent the [truce] days as though we were in our barracks in Cairo," an Egyptian officer named Gamal Abdel Nasser reported. "Our laughter filled the trenches." Ten days later, a second truce halted hostilities until October.

THE WAR ENDED IN ARMISTICE, NOT IN peace. Beginning in October, the IDF won decisive victories over the Egyptian forces in the south, chasing them out of all Palestine except the Gaza Strip. In the end, it added some 2,000 square miles to the 6,000 allocated by the U.N. Partition Plan. To save its army, Cairo signed an armistice in February. Jordan and Syria soon followed. These agreements would govern Israel's borders until the 1967 Six-Day War. In the 1948 war's aftermath, the defeated Arab leaders were not merely vilified. Egyptian prime minister Nuqrashi and Jordan's King Abdullah were assassinated, and King Farouk was overthrown.

But a far more devastating result of the war, and the third hinge of Morris's detailed account of it, remains the most contentious today: the 700,000 Palestinian refugees it displaced. The Palestinians' flight began on the first day of the war, in November 1947; Morris estimates that during the civil-war stage 75,000 to 100,000 fled or were displaced. The first to flee were Arab notables, who escaped to Beirut, Damascus, and Amman; the Palestinians were deserted by their own elites. (Morris also discusses the other refugee problem: the 600,000 Jews expelled from Arab countries after the war began.)

The largest wave of refugees, however, took flight between April and June 1948. They fled for fear of getting caught up in the fighting, or of living under Jewish rule, or because of the soaring prices and unemployment brought about by the war. Others feared fellow Arabs who considered traitorous anyone who accepted Jewish sovereignty. Others were in effect driven away by their own leaders, or by the

promises on Arab radio that residents could return home as victors after the imminent invasion by Arab countries.

In still other cases, Israeli soldiers, worried about a fifth column, encouraged Palestinians to flee, or expelled them. They razed some villages to prevent Arab forces from using them. But the Israeli policy was inconsistent and ad hoc. In Lydda and Ramla, the IDF expelled 50,000 residents (under orders issued by Rabin). In Isdud and Khirbet Khisas, the IDF ordered inhabitants who had not already fled to leave. At Majdal, by contrast, the IDF encouraged the villagers to stay, and even asked those who had already left to come back. In Haifa, Mayor Shabtai Levy pled with his city's Arabs to stay. In Acre, many Arab residents did remain, and became Israeli citizens. The Galilee was left with substantial Arab populations. (Today, 20% of Israel's citizens are Arabs.)

Morris doesn't shrink from describing Israeli crimes—the looting of Arab houses; the execution of dozens in the village of Dawayima; massacres in the villages of Hule and Saliha along the Lebanon border; the atrocities committed in April 1948 by Ezel and Lechi fighters in the village of Deir Yassin, which included shooting unarmed prisoners.

Nor, for that matter, does Morris gloss over Arab massacres of Jews. He describes the cruel deaths of the inhabitants of the Etzion Bloc, south of Jerusalem, at the hands of the Arab Legionnaires to whom they had surrendered. And he tells how in revenge for Deir Yassin, Arabs ambushed a convoy of Jewish doctors, nurses, students, and academics on their way to Hebrew University, burning them alive. Seventy-eight died.

But Morris suggests that Arabs simply had fewer opportunities to commit atrocities; while Israelis captured hundreds of Arab villages and towns over the war's course, the Arabs took fewer than a dozen Israeli settlements. Each of those, however, was destroyed. More to the point, Morris rejects the notion that the Haganah had a master plan for the expulsion of the country's Arabs.

On the contrary, Zionist leaders took for granted the full equality of the Arab minority

in the future Jewish state. In a letter to his son ten years before the war, Ben-Gurion wrote: "We do not wish and do not need to expel Arabs and take their place. All our aspiration is built on the assumption—proven throughout our activity—that there is enough room for ourselves and the Arabs in Palestine." Ten years later, he declared hopefully:

If the Arab citizen will feel at home in our state...if the state will help him in a truthful and dedicated way to reach the economic, social, and cultural level of the Jewish community, then Arab distrust will accordingly subside and a bridge will be built to a Semitic, Jewish-Arab alliance.

"By contrast," Morris concludes, "expulsionist thinking and, where it became possible, behavior, characterized the mainstream of the Palestinian national movement since its inception."

DUE TO THE AVAILABILITY OF COPIOUS Israeli archival materials and the paucity of comparable Arab sources, Morris's book suffers an inevitable foreshortening of perspective. It takes us inside Israeli cabinet meetings, for instance, but cannot shed much light on internal Arab deliberations. On the whole, however, 1948 is dispassionate in its tone, meticulous in its research, patient in its pace, and comprehensive in its scope. In presenting the first Arab-Israeli war as a culmination of Arab resistance to the Zionist enterprise, and in placing that war convincingly in the context of the still raging confrontation between Islamism and the West, Benny Morris's history furnishes a compelling view of the origins of a conflict still very much with us. In ably following the thread of Arab rejectionism that wends its tragic way to the present, and in forcefully demonstrating that the Palestinian refugee problem was in large part created by a war the Arabs had initiated and lost, this book also offers an eloquent recovery of some political truths about the Middle East that have grown lamentably obscure.

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EYES WIDE OPEN

Willful Blindness: A Memoir of the Jihad, by Andrew C. McCarthy.
Encounter Books, 256 pages, \$25.95

SEPTEMBER 11, 2001, WILL LIVE IN INFAMY, but February 26, 1993, should also cause Americans to shudder. On that day 15 years ago, Islamic militants tried to topple the World Trade Center; six people in the building were killed, over a thousand injured. It was the first time the world network of Islamic terrorists had struck on American soil. Most Americans missed the message.

Andrew McCarthy's *Willful Blindness: A Memoir of the Jihad* is a comprehensive, meticulous, and impassioned reminder of that message. As lead prosecutor in one of the most notorious terrorism cases in U.S. history, no one is better equipped than McCarthy to recount the details of the ensuing trial that condemned Islamist kingpin Omar Abdel Rahman to a lifetime in a supermax prison. Equal parts historian, storyteller, and prophet, McCarthy relates the case's background magnificently. He begins with a penetrating history of the jihad movement: its origins in the Afghan-Soviet war, the CIA's involvement in fostering an environment that in turn spawned al-Qaeda and other jihadist groups, and the policy failures and institutional incompetence of our government, which eventually allowed a terrorist cell led by Rahman, the Egyptian "blind sheik," to conduct the recruitment, planning, and training for a major attack right here on our shores.

More than shadowy plotting occurred within our borders. McCarthy recalls a 1998 speech by Osama bin Laden's mentor Abdullah Azzam, delivered not in Pakistan, but in Oklahoma City, where a crowd of American-based Muslims was instructed that "the jihad, the fighting, is obligatory on you whenever you can perform it. And just as when you are in America you must fast... so, too, must you wage jihad. The word *jihad* means fighting only, fighting with the sword." It was a conference in the same city, on Christmas Day, 1992, sponsored by the Muslim American Youth Association (MAYA), that sparked my own interest in tracking radical Islam. The conclave featured speakers like Khaled Meshaal, Hamas's supreme leader. Speeches were punctuated by frenzied shouts of "kill the Jews" and "destroy the West." Books like *How to Kill the Infidel* were sold.

These events exposed a violent domestic strain of Islam whose menace was completely underestimated by federal authorities at the time—

and, unfortunately, all too often still. *Willful Blindness* levels a stinging critique not only of the self-defeating relationship between America's intelligence and law enforcement agencies, but of our inability to rethink a counterterrorism policy that relied on the legal system rather than on more aggressive and effective military techniques. "In the war against radical Islam," writes McCarthy, "the great calling of our generation, what was true when the enemy declared war fifteen years ago remains true today. If we are too obsessed with law, and liability, we are



Omar Abdel Rahman

shrinking from our highest duty: to protect our lives." In his recent writings for *National Review* and other journals, he argues that history will deplore the Supreme Court's decision in June 2008 to grant constitutional rights to illegal enemy combatants being held at Guantanamo. Justice Scalia wrote in his dissent that the ruling "will almost certainly cause more Americans to be killed." "The nation," he declared, "will live to regret what the Court has done today."

IN QUIET TIMES AMERICANS ARE LIABLE TO become their own worst enemies; we lower our guard. Al-Qaeda's failure to strike our homeland during the last seven years suggests that our policies are working. Why, then, are policymakers, legislators, and Supreme Court

Justices scaling back many of the safeguards now in place? McCarthy explains the dire consequences of the impatience, political expediency, and the narrow-minded partisanship that so often greet the Bush Administration's counterterrorism policies.

Nor does he neglect the dangerous chorus of professional grievance-mongers, often directed by homegrown Islamists tied to the Muslim Brotherhood and Hamas, which feeds the American public a steady diet of propaganda by means of a complaisant media. These groups argue that "Islamophobia," not radical Islam, is the problem. The Council on American Islamic Relations (CAIR), which claims to be a civil rights and "advocacy" group but was in fact founded in 1994 by operatives linked to Hamas, works to silence those who stand up to Islamic fanaticism by tarring its opponents as bigots and racists.

For all these reasons *Willful Blindness* could not appear at a more important time. America owes McCarthy a debt for his work first as a brilliant prosecutor, and now as an accomplished author. During the investigation into the 1993 attack, he reports, federal agents discovered on the computer of Nidal Ayyad, a Kuwaiti-born Palestinian plotter, the following statement:

Unfortunately, our calculations were not very accurate this time. However, we promise you that next time it will be very precise and World Trade Center will continue to be one [of] our targets unless our demands have been met.

The lapse of eight years between attacks in New York never meant the war was over. Andrew McCarthy, along with a team of dedicated prosecutors, locked up as many of the terrorists as he could and sounded the tocsin that radical Islam was not done with the U.S. or its largest city. By the time we got the message, however, it was too late. Readers of *Willful Blindness* will know how crucial it is to prevent the same mistake from happening again.

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BAD LITTLE FICTIONS

House of Wits: An Intimate Portrait of the James Family, by Paul Fisher.
Henry Holt & Co., 704 pages, \$35

OCCASIONALLY, I LIKE TO IMAGINE MY ideal dinner party. The guest list changes frequently, but George Eliot, Edith Wharton, and Jane Austen are always welcome at my table. Not the Jameses, however—at least not given Paul Fisher's wearying account of them in *House of Wits: An Intimate Portrait of the James Family*. By turns self-pitying, hypochondriacal, and—it cannot go unmentioned—sexually repressed, a more frustrated (and frustrating) clan of eminent Victorians one could scarcely imagine. In any event, the scheduling would be a nightmare, what with their many engagements and even more numerous nervous breakdowns. *House of Wits* might have been much more aptly titled "House of Fits."

The trouble begins on the very first page, where Fisher, currently a professor of American literature at Wellesley, arranges epigraphs from Nietzsche and psychologist Alice Miller's *The Drama of the Gifted Child* (1983). Yes, it's that kind of book. Success, the Nietzsche selection declares, is the "biggest liar," and "great men" are "bad little fictions invented afterwards." The Miller quotation is all sympathetic psychobabble, with the poor "gifted child" suffering the agonies of "depression," "emptiness," and "self-alienation." There is no better summary of *House of Wits*: Fisher takes his "great men" and lays them out on the psychiatrist's couch, where he exposes the "gifted children" within, their fragile psyches still bruised from childhood traumas.

Alice James characterized her silly, egoistic father, Henry Sr., as a "delicious infant," and this is how Fisher seems to regard the rest of Henry's remarkable brood: psychologist and philosopher William, novelist Henry Jr., diarist Alice, and their two lesser-known siblings, Wilkie and Bob. There have been many individual biographies of the various Jameses, and even two ensemble portraits like Fisher's (F.O. Matthiessen's *The James Family*, 1947, and R.W.B. Lewis's *The Jameses*, 1991), but Fisher argues his book offers an "up-to-date critical perspective."

In their ambitions, ambiguities, and affectations, the Jameses can strike us as curiously contemporary—the forerunners of today's Prozac-loving, depressed or bipolar, self-conscious, narcissistic, fame-seeking, self-dramatized, hard-to-mate-

or-to-marry Americans. This side of the Jameses has often been downplayed, and much of the story has remained untold, buried under generations of propriety, convention, and veneration. But the Jameses' dysfunction sheds crucial light on the origins and full range of their influential achievements.

To Fisher, the Jameses are primarily a bundle of ailments. Henry Sr. is alcoholic and slightly lunatic; William has a bad back and is suicidal; Henry Jr. (Harry) is constipated and sexually repressed; Wilkie, rheumatic; Bob, alcoholic and sexually diseased; and Alice, neurasthenic and invalid. Their mother Mary alone escapes diagnosis, but only, it seems, so her patient "cheerfulness" can be ground down by a selfish husband and ungrateful children. The price of good health in the James family is eternal martyrdom.

SEXUAL DYSFUNCTION FASCINATES FISHER, though anything that hints at the scatological will do. For he holds, along with the most unsophisticated students of history, that the secret foundation of the Victorian period was sex. Every relation is scrutinized for sexual valence. What was the exact nature of Alice and Katherine Loring's "Boston Marriage"? Was Henry Jr. gay? How far did William's flirtations with his pretty young students go? Did Henry Sr. ever cast a furtive eye on his spinster sister-in-law, Kate Walsh?

Fisher loves to hint that the Jameses' relations were somehow incestuous, but the scholar in him won't let him claim it outright. Thus we get teasing insinuations—full of qualifiers—that permit him to disavow a claim even as he makes it. The James family, he tells us, "tended toward incest," "figurative and psychological incest, at least." He hems and haws about the sexual orientation of the various family members, finally rejecting labels like *heterosexual* and *homosexual* as too "crude," instead pronouncing the entire James family *queer*, which he defines rather broadly as "anyone whose sexuality doesn't conform to the social norms of his or her time."

Fisher is convinced that he is on the cutting-edge of literary interpretation, that his "intimate portrait" of the Jameses is *new*. The introduction is full of such self-congratulation: "Few people talked or wrote about the most intimate issues

in the Jameses' lives: mental illness, alcoholism, love, sex, homosexuality, money"; "there has been little frank discussion about the Jameses in love," etc., etc. Previous biographers might have done "superlative," even "meticulous, monumental" work, but none of them is the bold slayer of myths our author claims to be.

HOW TO TAKE THIS SINCERE, BUT FRANKLY bizarre, self-conception? The style of biography Fisher employs has been the dominant mode since at least the 1980s when Joyce Carol Oates gave the genre a name: "pathography." (Arguably, the trend started much earlier, though it was not so entrenched as it is today. Freud—who else?—pioneered the form with his self-professed "pathological review" of Leonardo da Vinci in 1910.) Oates defines pathography thus: "Its motifs are dysfunction and disaster, illnesses and pratfalls, failed marriages and failed careers, alcoholism and breakdowns and outrageous conduct"—a thorough description of the *House of Wits*.

Far from being an innovator, Fisher is on well-trod ground, and his book is hardly exceptional among Jamesiana in its fascination with the tawdry. Scholars and critics have been only too eager to pick apart the Jameses' dysfunctions, almost to the exclusion of their achievements. Never mind, too, that most of this amateur psychologizing is blatant speculation, which more often attests to the writer's own obsessions than to those of its supposed subjects. Just four years ago—when so many books about Henry Jr. abounded that 2004 was declared "The Year of Henry James"—the fiercest debate was not over, say, the famously ambiguous ending of *The Ambassadors*, but over biographer Sheldon M. Novick's assertion that "one evening in the spring of 1865" James masturbated "his young friend Oliver Wendell Holmes." Even a dinosaur like Leon Edel in his five-volume biography of Henry posited a homoerotic relationship between Henry and his brother William. Far from being "buried under generations of propriety, convention, and veneration," the Jameses' intimate lives have been all too thoroughly excavated.

Even Fisher's insistence that the Jameses are "curiously contemporary" plays into current biography's demand for relevance, which always takes the form of telling a mass audience of readers that the great men in question are just like us,

replete with our foibles and insecurities. Why, Henry James would have loved Prozac, too! Such a perspective certainly makes him seem less remote, but it also downplays the real differences between his world and our own. More insidiously, it encourages us to pity him and his family for the misfortune of having been born in (as Fisher calls it) "the monumentally repressed nineteenth century." After all, if they're just like us, "their hidden passions and vulnerabilities" should be completely explicable to us. Indeed, given our superior vantage point in history, we can understand them even better than they understood themselves. Yearnings unnamable to them are classifiable by us. Given our "new theoretical structures," Fisher tells us, "we are significantly more able to interpret what lies behind [the Jameses'] hard-to-read expressions."

What these "new theoretical structures" are capable of is nothing short of amazing. To judge from *House of Wits*, they confer the power to read minds. Take, for example, Fisher's account of the "rather repressed" William's trip to Brazil, during which he supposedly experienced a "sexual awakening." That there's no indication of this in his letters home or other papers is of no importance. Perhaps the letters were edited, Fisher suggests, "comically doctored for consumption by his little sister." (This is one of Fisher's favorite tricks, in which the very absence of evidence is made out as proof.) Anyway, he continues, poor William, coming from "buttoned-up Massachusetts," probably didn't understand the full import of this life-changing event. "During an era in America when sex was rarely mentioned, William hardly knew what desires had broken loose inside him." But you can bet Fisher does.

It's hard to say to whom this biographical approach is more condescending: its readers or its subjects. On the one hand, it assumes that today's readers are so narcissistic they're only interested in a book that holds up a mirror to their own lives, or perhaps what their lives lack; hence the curious tabloid-style packaging as if these Victorians were modern-day celebrities. On the other hand, note the pity redolent in "rather repressed William," who could hardly understand what "desires had broken loose inside him." And what of "the vulnerable, struggling Harry James," who is so squeamish he can't even use the word *buttocks* in his letters, but has to resort to the "jarringly nursery-ish or auntish" *bottom*, "vis-

ibly struggl[ing] with the issue of graphic nakedness"? But what else can be expected from those poor, benighted Victorians, always covering statues with fig leaves and draping furniture legs?

Victims and victimizers: these are the roles available in contemporary biography. For the most part, the young Jameses are cast as victims, though occasionally Fisher slips in a mention about all those poor souls in steerage while the Jameses luxuriate in first-class cabins. But class war is not terribly interesting to Fisher, so the Jameses get a free pass on that one. Still, there must be a villain, and unlucky Henry Sr. gets the part. Whenever Fisher needs a stand-in for the evils of patriarchy, Henry Sr. is called in, always ready to tyrannize over his wretched female relations.

BUT IF PATHOGRAPHY IS TIRED, CONVENTIONAL, and stale, why do these biographies continue to crowd the shelves? Won't we ever tire of learning that all our golden idols have feet of clay? Or is there something more at work here than mere muckraking or pandering to our prurient impulses?

The pathographer sees himself as deconstructing myths, refusing, as Fisher puts it, to let the success of great men "obscur[e] the real complexity of famous lives." Instead, the pathographer promises to expose great men for the "bad little fictions" they really are. Yet, as bold and iconoclastic as the pathographer thinks he is, he is actually in thrall to a much more powerful, enduring mythology: the myth of the tortured artist or the dysfunctional genius.

Great men are expected to suffer for their talents, and Fisher's Jameses do so exquisitely. Indeed, he seems to think he must heighten their trials and tribulations lest we suspect their credibility. The "influential achievements"—which all this dysfunction supposedly sheds "crucial light" on—are largely ignored. Fisher says almost nothing about William's work and neglects Henry's career as a novelist in favor of his disastrous foray into playwriting. Never mind that after this failure, he would go on to write three of his most important novels—*The Wings of the Dove*, *The Ambassadors*, and *The Golden Bowl*. Of this amazing period of productivity, Fisher can only mutter, "Harry's involuted style would eventually thwart his hopes for large book or ticket sales."

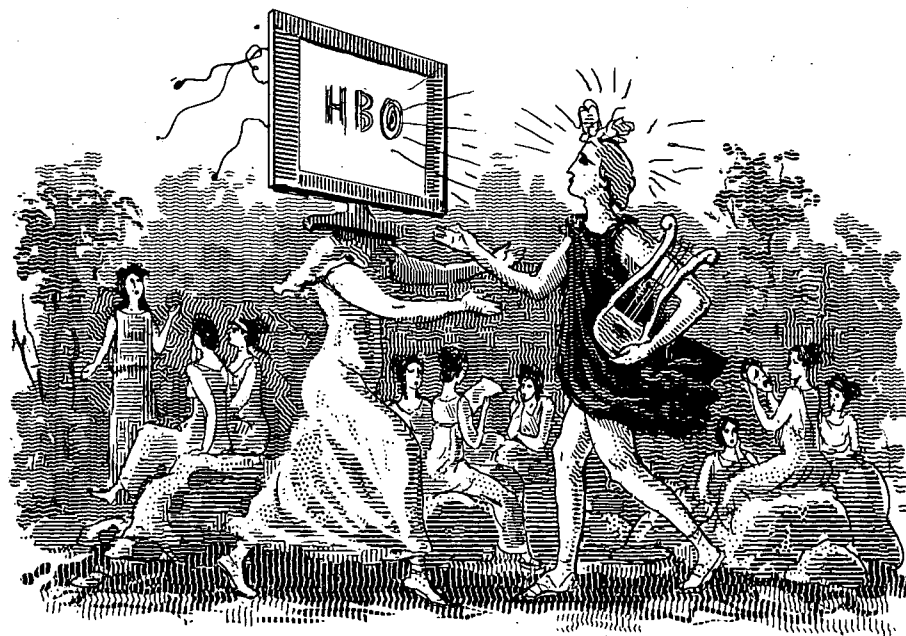
To be sure, Fisher's apparent lack of interest in the novels is also a kind of blessing. He seems to regard Henry's work as veiled autobiography, the outpourings of a tortured soul. The resulting interpretations are wholly personal and strikingly reductive. Fisher treats the early novella *Roderick Hudson* as a meditation on Henry's possible sexual relationship with a handsome Russian aristocrat; *The Bostonians*, as a testimony of Henry's troubled feelings about Alice's "Boston Marriage" and his own anomalous sexuality; *The Americans*, as a sublimation of the "psychosexual" relationship between William and Henry. Thus some of the greatest novels in American literature are treated as little more than the confessions of a priggish, sexually frustrated pedant.

Dysfunction might sometimes be linked to genius, but it cannot be the whole of it, unless we are to believe, as the current trend of "misery-lit" (harrowing memoirs of personal trauma) would have it, that to suffer is, in and of itself, art. Dysfunction certainly did not make geniuses of the younger brothers, Bob and Wilkie, who both wound up failures—bankrupt, miserable, and exiled to an inhospitable Midwest. Nor did it make one of Henry Sr., for all his ambitions to become a great philosopher.

The missing ingredient might be "wit"—to return to Fisher's promising title. There are precious few examples of the Jameses' wit in the book, but these few are enough to make one wish to have known them. "There could not be a more entertaining treat," wrote E.L. Godkin, the founder of *The Nation*, "than a dinner at the James house." Visitors spoke of leaving in "convulsions," delighted by the young Jameses' antics and badinage. So excitable were they that Mary often sat all the children on one side of the table, lest a guest be accidentally stabbed in the course of their gesticulations. To amuse their guests, they competed in concocting silly curses to heap upon Henry Sr.; that "his mashed potatoes might always have lumps in them!" Comical, irreverent, and ebullient, these Jameses—and not the dreary, frustrated bores of Fisher's imagining—would be welcome at my table anytime.

Cheryl Miller is a 2007 Phillips Foundation Journalism Fellow and editor of Doublethink magazine.

IS THERE INTELLIGENT LIFE ON TELEVISION?



TV Grows Up

IF YOU CAN TEAR YOURSELF AWAY FROM YOUR favorite television shows long enough to wander down to your local bookstore, you will be amazed at all the books you'll find these days—about your favorite television shows. The medium that was supposed to be the archenemy of the book is now giving an unexpected—and welcome—boost to the publishing industry. It is well known that for the genre of literary criticism, publishers are extremely reluctant to bring out what are called monographs—books devoted to a single author or a single work (unless that single author is Shakespeare or the single work is *Hamlet*). Those works of literary criticism that are published often come out in print runs that number in the hundreds. By contrast, a book devoted to a single television show, *The Simpsons and Philosophy: The D'oh! of Homer* (2001, published by Open Court and edited by William Irwin, Mark T. Conard, and Aeon J. Skoble), has reached its 22nd printing and its sales number in the hundreds of thousands.

Partly inspired by the success of *The Simpsons* volume, three serious publishing houses—Open Court, Blackwell, and University Press of Kentucky—currently have series on philosophy and popular culture, with volumes devoted to such TV shows as *Seinfeld*, *The X-Files*, *The Sopranos*, *South Park*, *Battlestar Galactica*, *Family Guy*, and 24. These volumes use moments in the shows to illustrate complicated issues in ethics, metaphysics, and epistemology. Books from other serious publishers analyze the shows themselves, often using sophisticated critical methodologies originally developed in literary theory.

THIS PUBLISHING PHENOMENON HAS BEEN little noted; what are we to make of the surprising synergy that has been developing between television and the book? The answer is that the proliferation of serious books about television is a clear sign that the medium has grown up and its fans have grown up with it. Many of the publications in question are guidebooks to individual shows, containing episode-by-episode plot summaries, cast lists, critical commentaries, and other scholarly apparatus, including explanations of recondite cultural references and allusions in the programs. No one ever needed a guidebook to *I Love Lucy*. If you couldn't tell Fred Mertz from Ricky Ricardo, you probably couldn't read in the first place. But with contemporary shows such as *Lost*, even devoted fans find themselves bewildered by Byzantine plot twists, abrupt character reversals, and dark thematic developments. Accordingly, they welcome whole books that try to sort out what is happening in their favorite shows and to explain what it all means. The fact that we now need books to explain our favorite TV shows suggests that the best products of the medium have developed the aesthetic virtues we traditionally associate with books—complex and large-scale narratives, depth of characterization, seriousness of themes, and richness of language.

I am not insisting that the general artistic level of television has risen; only that, like any mature medium, it has reached the point where it can serve as the vehicle for some true artists to

express themselves. Even so, for those who have not been watching television lately and may be understandably skeptical of my claim, I need to explain what has changed in the medium to make it more sophisticated than it used to be, at least in its best cases. A lot of the change has been driven by technological developments. Whereas in its initial decades television programming was largely controlled by the Big Three networks, CBS, NBC, and ABC, the development of cable and satellite transmission has made hundreds of channels available, and vastly increased the chances of innovative and experimental programming reaching an audience. To be sure, the hundreds of channels now spew out a greater amount of mindless entertainment than ever before, and often end up recycling the garbage of earlier seasons. But the move from broadcasting to narrowcasting—the targeting of ever more specific audience segments—has allowed TV producers to aim an increasing number of programs at an educated, intelligent, and discriminating audience, with predictably positive results in terms of artistic quality.

During the same period, the development of VCRs and then DVRs, as well as videocassette and DVD rentals and sales, has freed television producers from earlier limits on the complexity of their programs. In roughly the first three decades of television history, if viewers missed a show in its initial broadcast slot, they had little chance of seeing it again; at best they had to wait months for a summer rerun. As a result, producers tended to make every episode of an ongoing series as self-contained and as easily digest-

ible as possible. But the proliferation of forms of video recording has made what is known as "time-shifting" possible. Viewers can now watch a show whenever they want and can easily catch up with any episodes they have missed (a survey in *TV Guide* revealed that 22% of *Lost* viewers now watch the show on DVR within seven days of its original air date). Some viewers have chosen to skip television broadcasting entirely and to watch shows only when they come out on DVD, a procedure that facilitates a much more concentrated experience of the unfolding of plot and character. Thus producers are now much freer to introduce elements of complexity into their shows, including elaborate plot arcs that may span an entire season—with confidence that viewers can handle such complications. With the advent of DVDs, television shows can now be "read" and "re-read" just like books—one reason why academic writing about television has suddenly flourished. What cheap paperbacks once were to literary scholarship, the DVD now is to television scholarship.

A Writer's Medium

THE VARIOUS CHANGES IN THE WAY PEOPLE watch television have made the medium much more attractive to creative talent. At the same time, Hollywood executives have discovered that what makes a TV series succeed from season to season is above all good scripts. As a result, in Hollywood circles, television is now known as a writer's medium. In movies, the director generally calls the shots, largely determining what finally appears on screen. That is why we know the names of individual motion picture directors, but are seldom aware of the screenwriters, even at Oscar time. The situation is just the reverse in television, where almost nobody knows who directs individual episodes of a series, but the writer-creators become famous—such as Chris Carter (*The X-Files*), Joss Whedon (*Buffy the Vampire Slayer*), and David Chase (*The Sopranos*). This situation is admittedly complicated by the fact that some television writers occasionally direct episodes of their shows themselves. Nevertheless, in television the way to have a lasting and creative impact is fundamentally as a writer, and Hollywood has come to value good TV writers accordingly. In an interview in the *Los Angeles Times* last April, Sue Naegle, the new chief of HBO Entertainment, said: "Development by committee or by patching together multiple people's ideas isn't the way to get great television. I think it starts with the writer. Somebody who's very passionate and has a clear idea about what they'd like to do and the kind of show they'd like to produce."

A writer who creates a show often becomes what is called in Hollywood a "showrunner"—

the one who puts together all the elements needed to bring the vision of a series to the screen. (For accounts of the role of showrunners, two useful books are Steven Priggé's *Created By: Inside the Minds of TV's Top Show Creators*, 2005, and David Wild's *The Showrunners*, 1999.) A good showrunner becomes responsible for the artistic integrity of his work in a way that no motion picture screenwriter can ever hope for. The TV showrunner has become the true *auteur* in the entertainment business, to use the favorite term of fancy French film theory.

As a result, creative writers are increasingly migrating to television, and it is attracting a higher level of talent than ever before. Today's TV writers are routinely college-educated and often have higher degrees in television writing from schools like USC and UCLA. The writing staff of *The Simpsons* has a high concentration of Harvard graduates, as witness all the jokes in the series at the expense of Yale. An excellent example of the new level of academic credentials of showrunners is David Milch, who served as writer-producer on *Hill Street Blues* and *NYPD Blue* and created a genuine television masterpiece in *Deadwood*. Milch graduated *summa cum laude* from Yale as an undergraduate, went on to get an MFA from Iowa, became a creative writing instructor at Yale, and even worked with Robert Penn Warren revising a literary anthology. In his book *Deadwood: Stories of the Black Hills*, Milch cites an impressive literary pedigree for his Western series:

The number of characters in *Deadwood* does not frighten me. The serial form of the nineteenth century novel is close to what I'm doing. The writers who are alive to me, whom I consider my contemporaries, are writers who lived in another time—Dickens and Tolstoy and Dostoevsky and Twain.

If academics are now finding material worth studying in television shows, one reason is that writers like Milch are putting it there.

Germany vs. Hollywood

THE GROWING SOPHISTICATION OF TELEVISION illustrates a general principle of media development. Every medium has a history, no medium has ever emerged full-blown at its origin, all media develop over time, and they only gradually realize their potential. For some of the traditional media, their origins are mercifully shrouded in the mists of time. The earliest Greek tragedies we have are by Aeschylus, and they are magnificent works of art indeed. But they by no means represent the primitive stages in the growth of the form. If

we did have the very first tentative steps toward Greek tragedy, we might be appalled at their crudeness and finally understand why this genre we respect so much bears a name that means in Greek nothing more than "goat song." By contrast, television had the great historical misfortune of being born and growing up right before our eyes, and many intellectuals have never forgiven the medium its birth pangs.

Television's problem with its reputation was compounded by the fact that it was the new kid on the media block at just the moment when Cultural Studies in its modern sense was hitting its stride and gearing up to criticize the American entertainment industry. It found its perfect whipping boy in television. I am talking about the Frankfurt School and its chief representative in America: Theodor Adorno. In 1947, he published, along with his colleague Max Horkheimer, *Dialectic of Enlightenment*, which contains a chapter called "The Culture Industry"—perhaps the single most influential essay in Cultural Studies of the 20th century. It epitomized, established, and helped promulgate the tradition of studying pop culture as a debased and debasing mass medium. In this chapter, Horkheimer and Adorno write primarily about the motion picture industry, which they, as German émigrés living in the Los Angeles area during World War II, had a chance to observe firsthand. In terms that have become familiar and that reflect their left-wing biases, they present Hollywood as a dream factory, serving up images of desire that provide substitute gratifications for Americans exploited by the capitalist system, and thereby working to reconcile them to their sorry lot.

In 1954, Adorno published on his own an essay entitled: "How to Look at Television" in *The Quarterly of Film, Radio, and Television*, which extends the Frankfurt School analysis of the culture industry to the new medium. Adorno may well be the first major intellectual figure to have written about television and to this day I know of no one of comparable stature who has dealt with the medium. His essay set the standard and the tone for much of subsequent analysis of television and remains influential.

As always with Adorno, his television essay is in many respects intelligent and perceptive. He does an especially good job of analyzing the ideological work accomplished by various television shows in getting Americans to accept the dull routine of their daily lives. But Adorno shows little awareness that he is dealing with a medium in its earliest stages, that it might develop into something more sophisticated and genuinely artistic in the future. Admittedly, at the end he speaks of the "far-reaching potentialities" of television, but he expects it to improve only because of critics like him, not because of any develop-

mental logic internal to the medium. He hopes that through his essay "the public at large may be sensitized to the nefarious effect" of television, presumably so that government regulation can do something about it. He would not dream that the commercial pressures on an entertainment medium could by themselves improve its quality.

When Adorno was writing in 1954, broadcast television was less than a decade old as a commercial enterprise and still groping toward a distinct identity. As with any new medium, it remained in thrall to its predecessors, following what turned out in many ways to be inappropriate models. In particular, early television modeled itself on radio, structuring itself into national broadcasting networks (in several cases derived directly from existing radio networks) and reproducing radio formats and genres—the game show, the quiz show, the soap opera, the talk show, the variety program, the mystery, and so on. Some of the most successful of the early television shows, such as *Gunsmoke*, were simply adapted from radio precursors.

The Cultural Pyramid

THUS AT SEVERAL POINTS IN THE ESSAY Adorno stigmatizes television for features that turn out to have merely reflected its growing pains. For example, he condemns television for creating programs of only 15 or 30 minutes duration, which he correctly views as inadequate for proper dramatic development but incorrectly views as somehow an inherent limitation of the medium. He had no idea that television was soon to move on to one- and even two-hour dramatic formats, and that it eventually was to develop shows like *The X-Files* or *Lost* with a full season arc of episodes—some of the largest scale artistic productions ever created in any medium, comparable to Victorian novels in scope.

Elsewhere Adorno dogmatically proclaims: "Every spectator of a television mystery knows with absolute certainty how it is going to end." This may have been true when Adorno was writing (personally I doubt it), but try telling it to fans of the aptly named *Lost* today. They are not just mystified about how the series is going to end way off in the future; they are not even sure what is going on in the present. Or consider the recent furor over the final episode of the final season of *The Sopranos*. For weeks media pundits speculated about how the series was going to end, but they all proved wrong, and everybody was shocked by a kind of abrupt conclusion that was unprecedented in television history. This surprising turn in *The Sopranos* is exactly what one would expect at a later stage of a medium, when producers, for both artistic and commercial reasons, deliberately thwart their audience's

expectations in order to generate interest. Amazingly, for a sophisticated Marxist, Adorno does not appear to grasp that media have histories.

Insisting that television is inferior to earlier examples of popular culture, Adorno contrasts 18th-century English novels favorably with the TV shows he was watching in the early 1950s. But his examples of the popular novel are all drawn from the work of Defoe, Richardson, and

Discussed in this essay:

The Simpsons and Philosophy: The D'oh! of Homer, edited by William Irwin, Mark T. Conrad, and Aeon J. Skoble. Open Court, 256 pages, \$17.95 (paper)

Created By: Inside the Minds of TV's Top Show Creators, by Steven Prigge. Silman-James Press, 215 pages, \$14.95 (paper)

The Showrunners: A Season Inside the Billion-Dollar, Death-Defying, Madcap World of Television's Real Stars, by David Wild. HarperCollins, 304 pages, out of print.

Dialectic of Enlightenment, by Max Horkheimer and Theodor Adorno, translated by Edmund Jephcott. Stanford University Press, 304 pages, \$63 (cloth), \$24.95 (paper)

"How to Look at Television," in *The Culture Industry: Selected Essays on Mass Culture*, by Theodor Adorno. Routledge, 192 pages, \$21.95 (paper)

Textual Poachers: Television Fans and Participatory Culture, by Henry Jenkins. Routledge, 352 pages, \$38.95

Fans, Bloggers, and Gamers: Exploring Participatory Culture, by Henry Jenkins. New York University Press, 304 pages, \$70 (cloth), \$21 (paper)

Consuming Pleasures: Active Audiences and Serial Fictions from Dickens to Soap Opera, by Jennifer Hayward. University Press of Kentucky, 232 pages, \$39.95 (paper)

Fielding—the three greatest English novelists of the 18th century. And Adorno compares them to the most mindless sitcoms and game shows he can find in the earliest days of American TV. Too many intellectuals like Adorno score points against television by comparing the apex of achievement in earlier media with the nadir of quality in television. Television is a voracious medium. It now requires filling up hundreds of

channels 24 hours a day, seven days a week. The result is that television does show a lot of junk. But inconsistency in quality has always been the bane of any popular medium. For every one of Shakespeare's masterpieces, the Elizabethan theater turned out dozens of potboilers that share all the faults of the worst television fare (gratuitous sex and violence, stereotyped characters, clichés of plot and dialogue). For every one of Dickens's great works, the Victorian Age produced hundreds of penny dreadfuls, trash novels that have been justly condemned to the dustbin of history. A living culture always resembles a pyramid, with a narrow pinnacle of aesthetic mastery resting on a broad base of artistic mediocrity.

Adorno's contempt for American television leads him to treat it in an unscholarly manner. He does not even bother to name the particular shows he is discussing because evidently they all pretty much looked the same to him. One of his examples must be a sitcom I remember called *Our Miss Brooks*. Here is Adorno's capsule description: "the heroine of an extremely light comedy of pranks is a young schoolteacher who is not only underpaid but is incessantly fined by the caricature of a pompous and authoritarian school principal." I have trouble recognizing the show I remember with some fondness in Adorno's characterization: "The supposedly funny situations consist mostly of her trying to hustle a meal from various acquaintances, but regularly without success." One begins to suspect that Adorno's readings of American television are telling us as much about him as they do about television. I hate to think that the great anti-fascist intellectual had an authoritarian personality himself, but he seems to be suspiciously unnerved by the typically American negative attitude toward authority figures, especially when he sees it displayed by women. Could it be that when Adorno looked at Principal Osgood Conklin of *Our Miss Brooks*, he was having flashbacks to Professor Immanuel Rath of *The Blue Angel*, and couldn't bear the image of academic authority humiliated by underlings and students? After all, Germans have always respected their teachers much more than Americans do. One shudders to think what Adorno would have made of Bart Simpson's treatment of Principal Seymour Skinner.

Strange Customs of an Alien Tribe

AS ONE READS ADORNO ON AMERICAN television, one gradually begins to realize that he is writing about the subject as a foreigner. Indeed, he resembles an anthropologist trying to describe what are for him the strange customs of an alien tribe. All the symptoms of cultural displacement are there—he doesn't find the local jokes funny, differing

cultural products look alike to him, he claims to understand the artifacts better than do the people who create and use them, and so on. Standing far above the cultural phenomena he is analyzing, he is quite eager to criticize them and unwilling to appreciate them in their own terms. He does not think of television programs as the product of individual creators and thus has no interest in their distinct identities. In rejecting what would normally be congenial to him—a Freudian analysis of television—Adorno writes: “To study television shows in terms of the psychology of the authors would almost be tantamount to studying Ford cars in terms of the psychoanalysis of the late Mr. Ford.” With his conception of the culture industry, Adorno regards television shows as mass-produced and thus completely without any individuality or distinct identity—in short, without a name.

Adorno ignores the promising developments that would have been evident to any sympathetic observer in his day. Sid Caesar, along with writers of the caliber of Mel Brooks and Neil Simon, was already creating some of the most inventive comedy ever to appear on television. And waiting in the wings in the 1950s was the first authentic genius of the medium, Ernie Kovacs. He pioneered many of the camera techniques that have become standard on television, and later was the first person to realize the potential of videotape for special effects, particularly in comedy. One of Kovacs’s greatest television achievements was to create what would today be called a video to the music of Bela Bartok’s *Concerto for Orchestra*. With Adorno’s love of modernist music, here was a television moment he might have appreciated, although I’m afraid he would have dismissed it as just another cheap popularization of classical music, like the American performances of the Budapest String Quartet, which he scorned as too slickly commercial. Adorno condemned even as great a conductor as Arturo Toscanini because he worked for the National Broadcasting Corporation.

I don’t mean to berate Adorno for what he missed in the early days of television. He was after all a German émigré, whose command of English was no doubt shaky, particularly of the kind of colloquial idiom necessary to understand comedy in any medium. (I have noticed that Adorno never finds anything funny in American pop culture, not even Donald Duck.) Adorno was doing his best under difficult circumstances to understand phenomena that were profoundly alien to him. But the problem is that the work of this German émigré on American pop culture became the prototype of academic studies of television for decades, and we are still struggling to get out from under his influence. The idea that television is limited to stereotypes, that it is in its very nature as a medium artisti-

cally inauthentic, that it serves only the interests of a ruling elite, that it is ideologically reactionary—all these ideas are the intellectual legacy of Adorno, and they are still repeated by many critics of television today.

Taking the Fan’s Perspective

ADORNO’S TELEVISION ESSAY IS UNFORTUNATELY typical of the way intellectuals have dealt with new media over the centuries. When a new medium comes along, intellectuals, trapped in modes of thinking conditioned by the old media, tend to dwell obsessively on the novelty of the medium itself, focusing on the ways in which it fails to measure up to the standards of the old media. Early talking films often seemed like badly staged plays, and early television shows often looked like anemic movies. Fortunately, as a medium matures, it seems to breed a new generation of critics who are able to appreciate and articulate its distinctive and novel contributions. That is what is happening in television criticism today.

As a turning point, I would cite particularly the work of MIT Professor Henry Jenkins in such books as *Textual Poachers: Television Fans and Participatory Culture* (1992) and *Fans, Bloggers, and Gamers: Exploring Participatory Culture* (2006). Jenkins shows that it is not just the producers in television who can be creative, but the fans as well. Jenkins demolishes the great myth of the Frankfurt School—the myth of the passive consumer. For Adorno, television viewers sit captive in front of the screen, mesmerized by its images, allowing themselves to be shaped in their desires and their ideas by its overt and covert messages. He repeatedly compares American television to totalitarian propaganda. Unlike Adorno—who merely posits what the television viewer is like—Jenkins has studied and chronicled in detail how real people actually react to the television shows they watch. And what he has found is active, rather than passive consumers—fans of shows who take possession of them—his “textual poachers.” They quarrel with producers over new story lines, come up with variations of a show’s plots in their own self-published magazines, and develop the characters in directions their creators could never imagine. Jenkins persuasively argues in favor of taking the fan’s perspective in analyzing television—and this is the cornerstone of the new turn in Cultural Studies. Academics are now writing about television shows because they admire them, not because they hate the medium. They write out of genuine knowledge of and sympathy for a particular show—they even call it by name.

One of the best books I know on participatory culture is Jennifer Hayward’s *Consuming*

Pleasures: Active Audiences and Serial Fictions from Dickens to Soap Opera (1997). As her title indicates, in discussing the serial form as basic to modern culture, Hayward finds continuities between the serial publication of Victorian novels and the serial broadcasting of TV soap operas. She thus cuts across the conventional divide between high culture and popular culture that so many critics of television labor mightily to maintain. With painstaking scholarship and archival research, she demonstrates how serial forms make possible productive feedback loops between creators and their audience, thus driving a continual process of refinement and improvement in modern media.

There are of course potential pitfalls in adopting the fan’s perspective in academic criticism—a loss of objectivity and the ever present danger of taking a show too seriously, and treating a passing fad as of lasting significance. But as we have seen, the Olympian stance of an Adorno has its problems too—he is so far removed from the phenomena he is analyzing that he ends up out of touch with them, unable to separate the wheat from the chaff. We never object when literary critics write about Shakespeare’s plays as “fans.” In fact we assume that a Shakespeare scholar admires the plays, and expect to broaden and deepen our own appreciation of them by reading Shakespeare criticism. In many ways, the new writers about television are performing a traditional critical function. They are trying to separate the outstanding from the ordinary, the creative from the banal.

As a result, some of the best “literary criticism” today is paradoxically being written about television. Many literary critics seem to have become bored with their traditional role as the interpreters of great literature, and now are as interested in tearing authors’ reputations down as they once were in building them up. In the era of literary deconstruction, it can be refreshing to turn to television books and see critics who are still interested in reconstructing the meaning of the works they discuss. The readers of the new books on television will accept no less, since their reason for turning to these books is to help them better understand their favorite programs. At a time when literary critics often seem to be talking only to each other, the lively market for television books tells us something. The reading public is still interested in thoughtful intellectual conversation about what has always made for good narratives in any medium—complex plot lines, interesting characters, serious and even philosophical issues, and insights into the human condition.

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Book Review by James V. DeLong

PROPERTY RIGHTS AND THE WEB

The Future of the Internet—And How to Stop It, by Jonathan Zittrain.
Yale University Press, 342 pages, \$30



JONATHAN ZITTRAIN'S STANDING IN THE legal academic establishment's cyber division could not be better. He co-founded Harvard Law School's Berkman Center for Internet and Society, where he teaches Entrepreneurial Legal Studies, and he holds the chair in Internet Governance and Regulation at Oxford.

In *The Future of the Internet—And How to Stop It*, he posits that the internet's great virtue is its "generativity," a recent word meaning the "capacity to produce unanticipated change through unfiltered contributions from broad and varied audiences." Its openness allows free play to the creative genius of users, who push the web in unforeseen directions.

Generativity is good, according to Zittrain, not solely because people like it, but because it enhances "semiotic democracy," where we can participate in the making and remaking of cul-

tural meanings instead of having them foisted upon us." He contrasts the creative ferment of the Net with the stodginess of the old-line telephone companies, which centralized intelligence and control and allegedly played dog-in-the-manger by resisting outside innovation while doing little of their own. The beau ideals among the new possibilities opened up by the web are *Wikipedia*, the open encyclopedia; the free and open source software (FOSS) movement associated with the Linux operating system; and the Search for Extra-Terrestrial Intelligence (SETI), which uses the otherwise-idle capacity of thousands of P.C.s to analyze data.

But now internet generativity is in danger, Zittrain argues, due to the onslaught of spam, viruses, unstable applications, privacy invasion, copyright issues, and identity theft. The choices made by the internet's builders to keep the core

system simple and to provide maximum user freedom left the system vulnerable to these problems. Responding to them will mean restricting choice. Appliances, instead of serving general purposes like a personal computer, may become "tethered," designed to perform limited functions under the continuing control of their purveyor. Or administrators might assert control—via the government or private companies—in ways that inhibit generativity.

Most of the book elaborates the threat of control, which is the "future of the internet" forecast in the title. The "how to stop it" advice also promised in the title is pretty light. A section called "Strategies for a Generative Future" urges several protections: hackers should develop workarounds if Internet Service Providers (ISPs) try to exercise control; firms should not be allowed to induce third party contributions

with promises of openness, and then renege; and personal information should be shielded from the government even when stored in the computing cloud.

The book concludes that "generosity of spirit is a society's powerful first line of moderation," though some unfortunate regulation may become necessary when this fails. Most portentously:

Our fortuitous starting point is a generative device in tens of millions of hands on a neutral Net. To maintain it, the users of those devices must experience the Net as something with which they identify and belong. We must use the generativity of the Net to engage a constituency that will protect and nurture it.

And that's all there is on how the internet will be stopped from going off the cliff depicted on the book's cover.

TO UNDERSTAND WHY A VOLUME SO THIN can be so enthusiastically received (just check out Amazon), one must realize that it is not a stand-alone work. Zittrain is part of a movement of cyber-world legal academics centered at Harvard and Stanford, but with outposts at Berkeley, Duke, Yale, and other major schools. Its creed is drawn from works by, *inter alia*, Lawrence Lessig of Stanford, who has written a series of books on the open internet and the deleterious impacts of intellectual property; Yochai Benkler of Harvard, who argues that "social production" by peers acting on communitarian rather than market incentives constitutes a new mode of production that will rival capitalism; Tim Wu of Columbia, who says *Wikipedia* "is best known for popularizing the concept of *network neutrality*"; and William Fisher of Harvard, who wrote a book on sources of support for intellectual creativity in a world where property rights are both undesirable and unenforceable.

The movement can be characterized by five core sentiments, which include communitarian and democratic idealism, disdain for property rights (especially intellectual property), antipathy toward markets, social libertarianism, and hostility to a group of corporate enemies—among them the content companies (especially the music industry), the telecom carriers (Verizon, AT&T, and Comcast), and Microsoft.

Zittrain's work is part of this flow of articles, books, conferences, and press releases, and he embodies both the good and bad of it.

On the plus side, conservatives should find significant aspects of the movement's thought congenial. The hymns to the generativity of people adapting technology to their particular ends echo Friedrich Hayek or Julian Simon; one

could even say there is a belief here in spontaneous order. Conservatives would appreciate the movement's skepticism about the wisdom of regulators and of large corporate bureaucracies, as well as its reliance on culture and community mores—with law only as a last resort—to encourage good behavior.

The bad takes longer to analyze. The movement has a blind faith that the crowd will provide, but offers little explanation how an internet—or a society—built on its premises would result in high quality physical or intellectual products. One is left wondering how people of such high intelligence reach such flabby conclusions. Several gaps in collective focus are particularly worth noting.

First, there is the movement's one-sided understanding of economics. No one in its world must make a living, or worry about a return on investment. Large companies don't help solve problems in organizing human effort; they are malevolent entities. Movement thinkers assume cooperation must be altruistic: if money is involved, it does not count. They are obsessed with the idea that things must be free—not just cheap, or available to anyone willing to pay the price, but free. The towering importance of markets as institutions that facilitate human cooperation is not part of their intellectual or moral arsenal.

Second, the movement displays an almost complete disregard of history. The internet is treated as a product of immaculate conception. The book has a table that lists various technologies and rates them according to their generativity, but it is trivial. The difference between a knife and a potato peeler is noted, and that between dumbbells and an exercise machine. Missing are the really great examples of generative technology, those that changed societies and civilizations. If one seeks historical parallels to the internet, one should, for starters, think of the sailing ship, the canal, the railroad, and the telegraph—all of which opened the world to new possibilities. The sailing ship, for instance, was like the internet in that the basic medium, the ocean, was open to all. Anyone could build a boat and set sail for his own purposes. It thus differed from the railroads, which required expensive construction, maintenance, and management. But over time even sailing ships needed an immense infrastructure to make the medium work more efficiently, not least because the community norms against piracy didn't quite do the trick. Navies, self-defense, and hangings were also necessary.

Many of the critical issues in internet governance were foreshadowed by earlier technologies, as has been documented by such thinkers as Andrew Odlyzko. Reading 19th-century legal cases on the meaning of "discriminatory pricing" triggers déjà vu. Indeed, one can go back even earlier, to the common law of common carriers,

and examine how our forebears worked their way through rules governing harbors, wharves, inns, ferries, stagecoaches, and canals, with profit to one's thinking about the internet.

The movement's historical ignorance extends to intellectual property. Issues of what should be protected, to what degree (if at all), and how to deal with the cumulative nature of knowledge have been dissected repeatedly ever since 1474, when Venice passed the first known patent law.

The movement is disconnected from this tradition. Instead it just repeats its argument that intellectual property protection extends too far and must be cut back. Its theory seems to be that the internet is a new world in which the supply-side incentives that preoccupy the old tradition are irrelevant because the generative spirit will provide all necessary intellectual content. Everything, therefore, must be subordinated to the need for instantaneous availability.

Third, to a large degree, movement scholars reject the idea that individuals need to be able to protect and profit from the fruits of their generativity because they misunderstand the so-called "wisdom of crowds." A famous example of this wisdom is the county fair contest to judge the weight of an ox. Let enough people participate, and the final total turns out to be remarkably accurate. Ergo, the crowd knows.

But the real lesson is not that that crowd is wise; it is that ignorance is randomly distributed. Thus the guesses of the foolish cancel out, leaving the expert farmers and stock buyers to determine the outcome. The process can be left uncontrolled because as long as ignorance is random, and the number of participants large, there is no need to try to determine in advance who is an expert.

This insight is valuable, but the lesson is *not* that the crowd is wise, or that everyone is equally generative, or that democracy should rule everything, with the votes of the ignorant and the knowledgeable weighted equally. For example, the internet was indeed crucial to the development of the Linux operating system, but not because it let everyone participate. It allowed geographically dispersed experts to find each other and cooperate, with low transaction costs. Contrary to myth, the actual code writing of Linux has always been a closely-held, murderously meritocratic process. The crowd is allowed to help find bugs, not write the code.

FREE AND EASY WITH THE FUNDAMENTALS of economic thought, blind to the illuminations of history, and enamored with the wisdom of crowds (which easily turns into the madness of mobs), the movement floats off into abstractions about net neutrality, universal generativity, communitarian sharing, and semiotic democracy. In the movement's defense, two fac-

tors peculiar to the internet's explosive growth helped lead these thinkers astray.

As noted, the internet at the beginning was more akin to an ocean with sailing ships than a railroad, because the medium was, like the ocean, simply there. The nature of telephone technology left unused bandwidth that could be used for data transmission. The Defense Department and the National Science Foundation funded the extra gear needed to build the Net on this excess capacity. After it got going, the Net received another rocket boost from the boom of the late 1990s. Many of the companies went bankrupt, but the infrastructure they built did not evaporate. It remains available at a cut rate to this day.

The result was that the telecom companies were not in the position to ration a scarce resource, limiting it to its highest-value uses. They had the bandwidth, at least at the trunk level, and were always trying to lure traffic.

The suddenness with which the internet came into existence also allowed the oddity noted by Zittrain: it took a while for the bad guys to catch up. It always takes a little time; the first train robbery in America did not happen until 1866. Had the build-up gone more slowly, problems of privacy violations, viruses, scams, and spam would have developed in more measured style, and the need for more maintenance and control would have arisen more routinely.

The second special circumstance related to the nature of intellectual property. Generations-worth of material created under old rules and old incentive structures suddenly became available for digitization and distribution. No protections were in place, because intellectual property had always been defended primarily by the cost of reproducing and distributing it. When the marginal cost of these functions fell close to zero, the I.P. was free for the taking. A similar fate even befell new material, such as the news and music. The old business models retained enough vitality to produce content for a time, even as the ravenous Net hollowed out their economic support.

Because the internet was built on excess capacity and free content, the old rules of economics were suspended. Allocating scarce resources was not the issue. With plenty of trunk line dark fiber waiting to be filled, incentives to produce new content could be ignored while the Net python digested the old. The internet encouraged business models that focused on appropriating existing capacity and content, not on producing new content.

The internet is wringing all kinds of transaction costs out of the economic system, includ-

ing the costs of intellectual collaboration and distributing intellectual products. It is true that this changes the content world in exciting ways, opening up new frontiers for generativity. But it is also true that existing content-producing companies will likely be wiped out, which leaves a little problem of how content will get produced in the future. The suggestion that communitarian production can substitute is absurd. The television show *Battlestar Galactica* cannot be produced as a free form communitarian enterprise, even if its producers are highly collaborative. If you do not give the creators of BSG both the right and the power to protect their work from random appropriation, how can such shows get made?

Zittrain would apparently favor holding those who pirate BSG individually responsible, one by one. Nothing must be done to lock down the Net, he insists. This too is absurd, given the ubiquity of peer-to-peer (P2P) file sharing networks, and the anti-property mindset among the young that has been gleefully fostered by the movement.

The availability of vast amounts of content obscures the problem with the movement's assumption that unpaid generativity is the future. A service like *Wikipedia* is derivative. It does not seek original knowledge, and however useful it is (I use it daily—e.g., the 1866 date for the first train robbery), it's simply the product of running existing books through a scanner or word processor. The contribution to the availability of knowledge is great; the contribution to acquisition of knowledge is small. The oft-made argument that *Wikipedia* is almost as accurate as the *Encyclopedia Britannica* is especially droll; considering that the source of much of *Wikipedia*'s material is past editions of the *Britannica*, the online encyclopedia should be as accurate!

The same can be said for other poster children of communitarian generativity. The core of the FOSS movement is the Linux operating system, which was invented by Unix at Bell Labs. It has been much augmented and improved, but not by battalions of hackers who flip burgers by day to support their night-time addiction to writing code. Linux programmers are paid by IBM, Hewlett-Packard, and their ilk, who see value in commoditizing the operating system so they can get a bigger share of value for their hardware and services.

Even SETI is a dubious example. When it started, excess computing capacity was going to waste. But SETI is not producing any results. Quite a few projects are now competing with it

for access to excess P.C. capacity, but, in the absence of a market, it is impossible to judge the best use of resources or provide incentives to shift use.

BUT THE FREE RIDES ARE COMING TO AN end. The old business models that produced important content, notably the news and music businesses, are broken. Without property protection, it is hard to see where new models will come from to encourage professional production. The movement assumes that advertising can pay the bill, but there is no reason to think that the business of selling eyeballs to hucksters can fill the financial gap left by the collapse of real businesses that sold content directly to consumers.

Nor is it likely that today's glut of unused bandwidth will last. People will think of new uses and demand more and more from the internet. Some of this will come from those old standbys of technical progress—entertainment and pornography—but important business and medical services will also have a role. As the internet becomes more sophisticated so too will the bad guys, as Zittrain says, which makes an increase in centralized control inevitable. The real challenge is building and adapting institutions to limit and rationalize the controllers.

But Zittrain and the movement have little or nothing to say about this challenge, which is unfortunate, since historical experience tends to support their basic policy prejudices. Smart societies, for example, do not allow the controllers of infrastructure to expand control into the generative activities that rely on that infrastructure. A railroad does not get to raise the freight rates charged factories to levels that would capture their entire profit. But neither do factories get to decide the freight rates, since they would opt for zero. And if the question is tossed to the government, then it is settled mostly by political pressure, which is not a good way to make decisions on long term capital investment.

Designing a technical, economic, and legal regime that provides the revenue necessary to support the appropriate amount of infrastructure—and that determines the "appropriate amount"—will not be easy; and unfortunately, the movement's abstract dedication to "net neutrality" will not be much help.

James V. DeLong is Vice President and Senior Analyst of the Convergence Law Institute, LLC, in Washington, D.C.; and Special Counsel with the law firm Kamlet Shepherd & Reichert, LLP.

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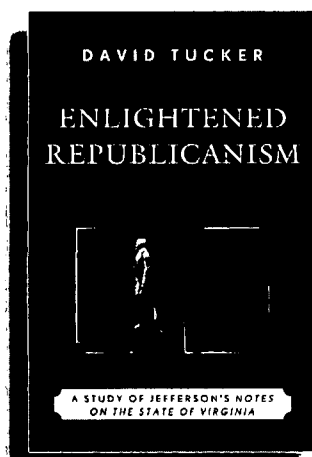
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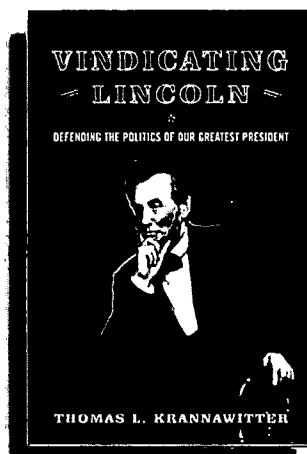
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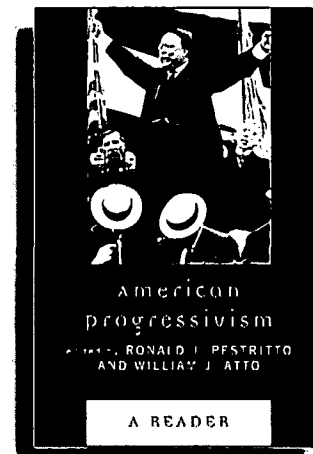
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